

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**VICTOR SMITH,**

**Plaintiff,**

**V.**

**CASE NO: 3:05 CV 1186**

**EURO-PRO OPERATING, L.L.C.,  
EURO-PRO MANAGEMENT COMPANY  
CORP. and STANRO-EP CORP.,**

**Defendants.**

**EURO-PRO MANAGEMENT SERVICES, INC.'S**  
**EVIDENTIARY MATERIALS IN SUPPORT OF**  
**MOTION FOR SUMMARY JUDGMENT**

## TABLE OF CONTENTS

Exhibit A: Portions of Plaintiff, Victor Smith's Deposition

**Exhibit B: Portions of Ralph Hudnall's Deposition**

**Exhibit C: Declaration by Terry Robertson**

Exhibit D: EEOC No-Cause Finding

/s/ Warren B. Lightfoot, Jr.

Warren B. Lightfoot, Jr.  
Attorney for Defendant  
Euro-Pro Management Services, Inc.

**OF COUNSEL:**

**MAYNARD, COOPER & GALE, P.C.**  
2400 AmSouth/Harbert Plaza  
1901 Sixth Avenue North  
Birmingham, Alabama 35203-4604  
(205) 254-1000

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2006, I electronically filed with the Clerk of Court the foregoing Defendant Euro-Pro Management Services, Inc.'s Evidentiary Materials in Support of Motion for Summary Judgment by using the CM/ECF system, which will send a notice of electronic filing to:

John I. Cottle, III  
(334) 283-5366 Facsimile  
Bowles & Cottle  
P.O. Box 780397  
2 So. Dubois Avenue  
Tallahassee, Alabama 36078

*/s/ Warren B. Lightfoot, Jr.*

---

OF COUNSEL

# **Exhibit A**

**FREEDOM COURT REPORTING**

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 CASE NUMBER: 3:05-CV-1186</p> <p>6 VICTOR SMITH,</p> <p>7 Plaintiff,</p> <p>8 vs.</p> <p>9 EURO-PRO OPERATING, L.L.C., et al.,</p> <p>10 Defendants.</p> <p>11</p> <p>12 STIPULATION</p> <p>13 IT IS STIPULATED AND AGREED by and</p> <p>14 between the parties through their respective</p> <p>15 counsel, that the deposition of Victor Smith</p> <p>16 may be taken before Angela Smith, RPR, CRR,</p> <p>17 at the offices of Bowles &amp; Cottle, at 2</p> <p>18 South Dubois Avenue, Tallassee, Alabama</p> <p>19 36078, on the 24th day of May, 2006.</p> <p>20</p> <p>21 DEPOSITION OF VICTOR SMITH</p> <p>22</p> <p>23</p>	<p>1 *****</p> <p>2 INDEX</p> <p>3 EXAMINATION</p> <p>4 PAGE</p> <p>5 By Mr. Lightfoot ..... 5</p> <p>6 DEFENDANT'S EXHIBITS</p> <p>7 PAGE</p> <p>8 Ex. 1 - Mr. Smith's resume ..... 29</p> <p>9 Ex. 2 - Job description for</p> <p>10 position in life cycle</p> <p>11 testing ..... 69</p> <p>12 Ex. 3 - The sketch of the steam</p> <p>13 cleaning testing</p> <p>14 machine ..... 79</p> <p>15 Ex. 4 - 6/28/04 e-mail from Chad</p> <p>16 to Mr. Smith ..... 86</p> <p>17 Ex. 5 - 5/5/04 evaluation from</p> <p>18 Mr. Hudnall from</p> <p>19 meeting ..... 90</p> <p>20 Ex. 6 - 8/31/04 evaluation ..... 103</p> <p>21 *****</p> <p>22</p> <p>23</p>
Page 2	Page 4
<p>1 IT IS FURTHER STIPULATED AND</p> <p>2 AGREED that the signature to and the reading</p> <p>3 of the deposition by the witness is waived,</p> <p>4 the deposition to have the same force and</p> <p>5 effect as if full compliance had been had</p> <p>6 with all laws and rules of Court relating to</p> <p>7 the taking of depositions.</p> <p>8 IT IS FURTHER STIPULATED AND</p> <p>9 AGREED that it shall not be necessary for</p> <p>10 any objections to be made by counsel to any</p> <p>11 questions except as to form or leading</p> <p>12 questions, and that counsel for the parties</p> <p>13 may make objections and assign grounds at</p> <p>14 the time of the trial, or at the time said</p> <p>15 deposition is offered in evidence, or prior</p> <p>16 thereto.</p> <p>17 IT IS FURTHER STIPULATED AND</p> <p>18 AGREED that the notice of filing of the</p> <p>19 deposition by the Commissioner is waived.</p> <p>20</p> <p>21 *****</p> <p>22</p> <p>23</p>	<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 EASTERN DIVISION</p> <p>4 CASE NUMBER: 3:05-CV-1186</p> <p>5 VICTOR SMITH,</p> <p>6 Plaintiff,</p> <p>7 vs.</p> <p>8 EURO-PRO OPERATING, L.L.C., et al.,</p> <p>9 Defendant.</p> <p>10 BEFORE:</p> <p>11 ANGELA SMITH, Commissioner.</p> <p>12 APPEARANCES:</p> <p>13 JOHN I. COTTLE, ESQUIRE, of BOWLES</p> <p>14 &amp; COTTLE, 2 South Dubois Avenue, Tallassee,</p> <p>15 Alabama 36078, appearing on behalf of the</p> <p>16 Plaintiff.</p> <p>17 WARREN B. LIGHTFOOT, JR., ESQUIRE,</p> <p>18 of MAYNARD, COOPER &amp; GALE, 2400</p> <p>19 AmSouth/Harbert Plaza, Birmingham, Alabama</p> <p>20 35203, appearing on behalf of the Defendant.</p> <p>21 ALSO PRESENT: Terry Robertson</p> <p>22 Ralph Hudnall</p> <p>23 Tiffany Threlkeld.</p>

1 (Pages 1 to 4)

**367 VALLEY AVENUE**  
**(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

## FREEDOM COURT REPORTING

Page 29	Page 31
<p>1 Q. Did they place other temps at 2 Euro-Pro as well? 3 A. Yes. 4 Q. All right. And that was in 5 December of '03? 6 A. Yes. 7 (Defendant's Exhibit 1 was 8 marked for identification 9 purposes.) 10 Q. All right. And what job did 11 you start out working at Euro-Pro? 12 Actually, hang on one second. I'm sorry. 13 One second on that. 14 Down here on your resume, and 15 we'll just make this Defendant's Exhibit 1 16 to your deposition. Did you -- Where it 17 talks about your skills at the bottom of 18 that page, do you see that? 19 A. Uh-huh. Yes. 20 Q. All right. Did you have all 21 of those skills by the time you -- Actually, 22 this is your resume as of the time you came 23 to Euro-Pro; right?</p>	<p>1 position, starting out? 2 A. My position at starting out, I 3 don't know the exact title when I started 4 out. I was working with a temp agency. I 5 don't think I had a title. 6 Q. Okay. All right. There are 7 -- At the facility -- At Euro-Pro's facility 8 in Auburn, there's sort of two divisions, 9 right, there's the cleanability project and 10 the life cycle project; right? 11 A. Yes. 12 Q. Which project were you on? 13 A. Cleanability. 14 Q. Okay. And is that where the 15 other -- what the other temps there working 16 with you were on the cleanability project? 17 A. Yes. 18 Q. Okay. All right. And what 19 were y'all doing on the cleanability 20 project? 21 A. We would record data and get 22 data on carpet and vacuum pick up of dirt 23 out of carpet, off of carpet.</p>
Page 30	Page 32
<p>1 A. Right. 2 Q. All right. So, did you have 3 all these skills before you came to 4 Euro-Pro? 5 A. Yes. 6 Q. Okay. And tell me what 7 knowledge you had in programmable logic 8 controls. 9 A. College. 10 Q. Okay. That's something called 11 -- That's called PLC; is that right? 12 A. Right. 13 Q. All right. So at college, 14 tell me what they -- Did you have a course 15 on it or what did you know about it? 16 A. Yes. I had a semester course 17 on programmable logic control. 18 Q. And that would have been at 19 Gadsden State? 20 A. Yes. 21 Q. Okay. All right. So you were 22 telling me in December of 2003, you began 23 working at Euro-Pro. And what was your</p>	<p>1 Q. Okay. 2 A. Basically, that's what we did. 3 Q. Yeah. And the cleanability 4 just deals with the product of a vacuum 5 cleaner; right? 6 A. Yes. 7 Q. The other -- Life cycle dealt 8 with other types of products? 9 A. Yes. 10 Q. Okay. Were there already two 11 temporary employees working there before you 12 got there? 13 A. I'm not sure. 14 Q. Were there other temps? 15 A. Yes. 16 Q. Okay. All right. When you 17 started out, were you reporting to Ralph 18 Hudnall? 19 A. Yes. 20 Q. Okay. So, did you and the 21 other temps in cleanability report to Ralph? 22 Is that the way it was set up? 23 A. Yes.</p>

8 (Pages 29 to 32)

## FREEDOM COURT REPORTING

Page 33	Page 35
<p>1 Q. And he was the director of lab 2 testing?</p> <p>3 A. I don't know if that was his 4 title. We reported to him.</p> <p>5 Q. Okay. And when you first 6 started, there was only the first shift, 7 right, there was that eight-to-five shift?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And then at some 10 point within a -- shortly after you began, 11 the company started a second shift; right?</p> <p>12 A. Yes.</p> <p>13 Q. And that shift went from two 14 p.m. to ten p.m.; is that correct?</p> <p>15 A. I think so. I'm not sure, but 16 I think that's correct.</p> <p>17 Q. Okay. And at the point that 18 they started the second shift, did they tell 19 you -- did Ralph tell you that they were 20 making you a permanent employee, or did 21 Euro-Pro tell you they were making you a 22 permanent employee?</p> <p>23 A. I don't recall if it was right</p>	<p>1 Q. You didn't know that? Do you 2 know that now, as we sit here?</p> <p>3 A. I know you told me that. I'm 4 not certain of that.</p> <p>5 Q. Okay. I understand. Yeah. I 6 was asking if you knew it. Not that you 7 have to rely on me to for that. I was 8 asking you if you knew that.</p> <p>9 When you started with 10 Euro-Pro, did you -- did you have meetings 11 and such with Ralph Hudnall in terms of -- 12 and Terry Robertson in terms of what was 13 expected as a Euro-Pro employee?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And were they clear 16 that they expected you to work during work 17 hours?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did they tell you they 20 expected everybody at that facility to treat 21 each other with respect?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Did they tell you</p>
Page 34	Page 36
<p>1 at that point. I don't know that it went 2 that fast.</p> <p>3 Q. Okay.</p> <p>4 A. But I think around that time I 5 was made a permanent employee.</p> <p>6 Q. Okay. And do you remember 7 what you were making, compensation-wise?</p> <p>8 A. I think my salary was 9 twenty-eight thousand, six hundred.</p> <p>10 Q. Twenty-eight thousand, six 11 hundred?</p> <p>12 A. Yes. I think. I'm not sure.</p> <p>13 Q. Okay. And did you know that 14 you were being compensated higher than the 15 other employees that were temporary 16 employees?</p> <p>17 A. That was temporary employees, 18 yes.</p> <p>19 Q. Did you also know that you 20 were being compensated more than every 21 employee there who wasn't a management 22 employee?</p> <p>23 A. No.</p>	<p>1 that they expected you to be a team player?</p> <p>2 A. Yes.</p> <p>3 Q. Did you pull your share of the 4 workload?</p> <p>5 A. Yes.</p> <p>6 Q. Did they tell you it was 7 important to keep the work areas clean?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Did they tell you 10 it was also important to show initiative, to 11 not just do what's asked, but to go above 12 and beyond the call of duty?</p> <p>13 A. Yes.</p> <p>14 Q. And did you believe in all 15 those things anyway, from your Navy training 16 and from all your prior work experience?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. When they made you -- 19 Did they actually sort of make you the lead 20 employee for the evening shift, where you 21 sort of were not a supervisor, but where you 22 were sort of in charge of the evening shift?</p> <p>23 A. Yes.</p>

9 (Pages 33 to 36)

## FREEDOM COURT REPORTING

Page 37	Page 39
<p>1 Q. Did they call you a lead 2 employee or was it just sort of -- did you 3 just play that role? 4 A. I think I just played that 5 role. 6 Q. Okay. And based on your prior 7 work experience, it was appropriate for you 8 to be the lead employee; right? I mean, did 9 you feel like it was appropriate for you to 10 be in that role? 11 A. Yes. 12 Q. And yet, you were made that 13 sort of lead -- You played that lead 14 employee role, and, yet, you were not the 15 most senior, in terms of experience, of the 16 employees that were on that evening shift; 17 correct? 18 A. Correct. 19 Q. You were the least senior; 20 right? You were the newest guy there? 21 A. Can we go back to the next 22 question -- the question before that? 23 Q. Sure.</p>	<p>1 want to be the lead employee on the evening 2 shift? 3 A. That's not what I -- I thought 4 I should have got paid more. I wasn't -- I 5 wasn't satisfied with the amounts at the 6 time. 7 Q. Okay. Well, were you pleased 8 with the increase in pay, even if it wasn't 9 as much as you wanted? 10 A. Was I pleased? 11 Q. Yeah. 12 A. Yes. 13 Q. Okay. All right. And were 14 you pleased to take on a position of more 15 leadership and added responsibility? 16 A. Yes. 17 Q. Okay. And are you the kind of 18 employee that likes to be challenged and to 19 get increases in responsibility? 20 A. Yes. 21 Q. All right. How did you get 22 along with Sam Hickman? 23 A. Not well.</p>
Page 38	Page 40
<p>1 A. On the evening shift. 2 Q. Yes. 3 A. There was only two, if my 4 memory serves me correctly, only two 5 employees, and I was the only permanent 6 employee. 7 Q. You mean three total, you and 8 two others, or just two, total. 9 A. Me and another. It was two 10 total. 11 Q. Oh, okay. 12 A. And I was the only permanent 13 employee on the evening shift. 14 Q. Okay. Did you go from -- Once 15 they put you on the evening shift in that 16 lead role, did you go from being an hourly 17 employee to a salaried employee? 18 A. Yes. 19 Q. And were you pleased with the 20 increase in pay and the added 21 responsibilities? 22 A. Not exactly. 23 Q. Oh, all right. Did you not</p>	<p>1 Q. Okay. Were you -- Did you 2 always treat him respectfully? 3 A. Yes. 4 Q. Was he a -- Was he an hourly 5 employee? 6 A. No. He was a contractor. 7 Q. Oh, a contracted employee? 8 A. Yes. 9 Q. Who did he work for? 10 A. I don't know the company. 11 Q. Like a temp agency? 12 A. Yes. 13 Q. Okay. He was a temporary 14 employee? 15 A. Yes. 16 Q. Like you had been before? 17 A. Yes. 18 Q. Okay. Did you have an 19 incident where there was sort of a near 20 fight between you and him? 21 A. I wouldn't call it a near 22 fight. We had a disagreement. 23 Q. An altercation?</p>

10 (Pages 37 to 40)



## FREEDOM COURT REPORTING

Page 45	Page 47
<p>1 Q. Okay. Did Euro-Pro have a --</p> <p>2 have rules that you can -- employees are</p> <p>3 only supposed to use the telephone for</p> <p>4 personal reasons during emergencies or</p> <p>5 during your break time, otherwise if you're</p> <p>6 using the phone it needs to be for business</p> <p>7 rules?</p> <p>8 A. I never heard of that rule.</p> <p>9 Q. Okay. You recall a meeting</p> <p>10 where Terry Robertson met with all employees</p> <p>11 and spoke about those kinds of rules with</p> <p>12 all of the employees?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did Terry say that he</p> <p>15 had understood that there was too much</p> <p>16 nonbusiness activity going on during</p> <p>17 business hours?</p> <p>18 A. Yes.</p> <p>19 Q. Did he say that people were</p> <p>20 abusing the phone, or words to that effect,</p> <p>21 were using the phone too much?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then what did he</p>	<p>1 Q. I understand.</p> <p>2 A. The Internet, at that time,</p> <p>3 was the main issue.</p> <p>4 Q. I understand.</p> <p>5 A. And that's what I focused on.</p> <p>6 Q. Sure. You had dealings with</p> <p>7 -- Well, scratch that.</p> <p>8 Ralph Hudnall, was -- was he</p> <p>9 always your supervisor? Let's see. Let me</p> <p>10 ask that. Was he always your supervisor?</p> <p>11 A. As far as I can remember, yes.</p> <p>12 Q. Okay. And then Terry was</p> <p>13 above him, correct, Terry Robertson?</p> <p>14 A. I think it was Chad Reese and</p> <p>15 Terry Robertson.</p> <p>16 Q. And then Terry. Okay. Did</p> <p>17 all three of those men always treat you with</p> <p>18 respect?</p> <p>19 A. Sometime.</p> <p>20 Q. Well, I mean --</p> <p>21 A. Not always.</p> <p>22 Q. I want to know if they always</p> <p>23 treated you, in the workplace, with respect?</p>
Page 46	Page 48
<p>1 say -- Did he say, you know: From now on,</p> <p>2 that you can only use the phone for</p> <p>3 emergency reasons or for -- or if you're on</p> <p>4 your break time?</p> <p>5 A. I don't recall him saying</p> <p>6 that.</p> <p>7 Q. Okay. Well, then, what did he</p> <p>8 set down as the ground rules going forward,</p> <p>9 that you recall?</p> <p>10 A. If I recall that, it was also</p> <p>11 the Internet and the phone. And he was</p> <p>12 telling everybody that people are using the</p> <p>13 Internet too much and the phone too much.</p> <p>14 Q. During business time?</p> <p>15 A. Yes. We were not allowed at</p> <p>16 that time to use the Internet, unless it was</p> <p>17 business purposes.</p> <p>18 Q. And the same thing with the</p> <p>19 phone?</p> <p>20 A. The phone, I don't remember</p> <p>21 the phone because it wasn't the main issue.</p> <p>22 He could have said that, but I don't</p> <p>23 remember.</p>	<p>1 A. No.</p> <p>2 Q. Okay. Terry Robertson, were</p> <p>3 there times that he did not treat you with</p> <p>4 respect?</p> <p>5 A. There was -- No.</p> <p>6 Q. Okay. Was there ever a time</p> <p>7 that Ralph Hudnall did not treat you with</p> <p>8 respect?</p> <p>9 A. Rephrase that question,</p> <p>10 please.</p> <p>11 Q. Sure. Was there ever a time</p> <p>12 that Ralph Hudnall did not treat you with</p> <p>13 respect?</p> <p>14 A. Yes.</p> <p>15 Q. When did Ralph Hudnall not</p> <p>16 treat you with respect?</p> <p>17 A. There was a time I thought he</p> <p>18 was making inappropriate jokes or</p> <p>19 inappropriate comments about something he</p> <p>20 saw on TV.</p> <p>21 Q. All right. When was that?</p> <p>22 A. I can't give you the exact</p> <p>23 time or exact date. I don't remember the</p>

12 (Pages 45 to 48)



## FREEDOM COURT REPORTING

Page 49	Page 51
<p>1 exact date.</p> <p>2 Q. Okay. You were only there a</p> <p>3 year, so it would have been -- and you</p> <p>4 started in December of '03, so would it have</p> <p>5 been sometime in 2004?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Are you able to say</p> <p>8 summertime? Did it happen on one occasion?</p> <p>9 A. It happened more than one</p> <p>10 occasion.</p> <p>11 Q. Okay. How many occasions?</p> <p>12 A. Approximately four or five.</p> <p>13 Q. All right. When -- And you</p> <p>14 can't tell me when any of those four or five</p> <p>15 were?</p> <p>16 A. Exactly no. Exact time, no.</p> <p>17 Q. And you can't even give me a</p> <p>18 ballpark; is that right?</p> <p>19 A. No.</p> <p>20 Q. What were the inappropriate</p> <p>21 jokes that you thought he said or he laughed</p> <p>22 about or whatever?</p> <p>23 A. He would make inappropriate</p>	<p>1 A. Not as I recall.</p> <p>2 Q. You don't recall any other</p> <p>3 employee ever talking about the Dave</p> <p>4 Chappelle Show?</p> <p>5 A. I don't recall that anybody</p> <p>6 has ever -- other employees come to me about</p> <p>7 the Dave Chappelle show.</p> <p>8 Q. Did you hear Ashley Sheffield</p> <p>9 ever talk about the Dave Chappelle Show?</p> <p>10 A. Not as I recall.</p> <p>11 Q. Okay. You don't recall</p> <p>12 anybody else talking about it?</p> <p>13 A. No.</p> <p>14 Q. Okay. Tell me, if you can,</p> <p>15 any of these four or five incidents, what</p> <p>16 the substance of it was.</p> <p>17 A. There was one I can remember</p> <p>18 he was doing -- Dave Chappelle was blind and</p> <p>19 he thought he was white and he was black.</p> <p>20 And when he found out that he was white, he</p> <p>21 divorced his white wife. And they asked him</p> <p>22 why he divorced his white wife. He said:</p> <p>23 Because she's a nigger lover. And he</p>
Page 50	Page 52
<p>1 comments about a Dave Chappelle episode</p> <p>2 that, really, I felt like it was</p> <p>3 inappropriate for him to make that towards</p> <p>4 me because there were racial jokes that</p> <p>5 David Chappelle would make and he would</p> <p>6 repeat those racial jokes to me.</p> <p>7 Q. Okay. So, on these four or</p> <p>8 five occasions, were they all approximately</p> <p>9 the same, I mean, it's the same type stuff?</p> <p>10 A. The same type thing. The same</p> <p>11 type stuff.</p> <p>12 Q. Okay. And did you watch the</p> <p>13 Dave Chappelle Show?</p> <p>14 A. Yes.</p> <p>15 Q. Did he watch the Dave</p> <p>16 Chappelle Show?</p> <p>17 A. Yes.</p> <p>18 Q. Is that something that y'all</p> <p>19 talked about on occasion?</p> <p>20 A. That's something that he had</p> <p>21 brought up on occasion.</p> <p>22 Q. Did other employees talk about</p> <p>23 the Dave Chappelle show as well?</p>	<p>1 actually repeated that scene and I didn't</p> <p>2 think that was funny.</p> <p>3 Q. Okay. He didn't use the "N"</p> <p>4 word, did he?</p> <p>5 A. Yes.</p> <p>6 Q. Did Dave Chappelle use the "N"</p> <p>7 word as well?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. All right. You didn't</p> <p>10 complain to anybody about that, did you?</p> <p>11 A. I think I talked to Ashley</p> <p>12 about it once or twice, that I didn't think</p> <p>13 that he should be making comments like that.</p> <p>14 Q. Okay. But you didn't talk to</p> <p>15 anybody -- You didn't complain to anybody in</p> <p>16 management about that?</p> <p>17 A. No.</p> <p>18 Q. You just mentioned -- You say</p> <p>19 you may have talked to Ashley about it?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Is that the only person</p> <p>22 you would have mentioned it to?</p> <p>23 A. I think so. She was -- We</p>

13 (Pages 49 to 52)

## FREEDOM COURT REPORTING

Page 53	Page 55
<p>1 talked. I think that's the only person I</p> <p>2 mentioned it to.</p> <p>3 Q. And you didn't tell Ralph you</p> <p>4 were offended by it, did you?</p> <p>5 A. No.</p> <p>6 Q. And you didn't tell Ralph to</p> <p>7 stop saying it, did you?</p> <p>8 A. No.</p> <p>9 Q. Did you laugh? I mean, did</p> <p>10 you kind of talk along with him?</p> <p>11 A. I think I mentioned I saw the</p> <p>12 scene, yes.</p> <p>13 Q. Did you tell him you thought</p> <p>14 it was funny, too?</p> <p>15 A. No.</p> <p>16 Q. Did he say he thought it was</p> <p>17 funny?</p> <p>18 A. I mean, yes.</p> <p>19 Q. And did you say you thought it</p> <p>20 was funny, too, you'd seen it?</p> <p>21 A. I told him I saw it. I didn't</p> <p>22 think it was funny.</p> <p>23 Q. Okay. Did you think some of</p>	<p>1 A. Not at this time, no.</p> <p>2 Q. Okay. Take your time and</p> <p>3 think about it. If there's any -- I mean,</p> <p>4 we've got all day. If there's anything else</p> <p>5 that you think he said that -- from the Dave</p> <p>6 Chappelle show that you thought wasn't</p> <p>7 funny, whether you complained or not.</p> <p>8 To be clear, I'm not</p> <p>9 interested in what the Dave Chappelle Show,</p> <p>10 if Ralph -- if you're saying Ralph Hudnall</p> <p>11 said something from that show.</p> <p>12 A. I can't recall anything else</p> <p>13 at this time.</p> <p>14 Q. Okay. So, that's the only</p> <p>15 specific you recall that Ralph ever said to</p> <p>16 you about the Dave Chappelle Show?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Who was -- Who was</p> <p>19 around when Ralph -- you say Ralph made this</p> <p>20 one statement to you about a blind man?</p> <p>21 A. Nobody.</p> <p>22 Q. Where were y'all standing?</p> <p>23 A. In a life test area.</p>
Page 54	Page 56
<p>1 Dave Chappelle's stuff was funny?</p> <p>2 A. Some of it.</p> <p>3 Q. Did you think that some of</p> <p>4 Dave Chappelle's stuff was funny and okay,</p> <p>5 and some of it was not funny and over the</p> <p>6 line, is that kind of --</p> <p>7 A. Some of it's over the line.</p> <p>8 Q. Is that your general</p> <p>9 impression of Dave Chappelle?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. A lot of other people</p> <p>12 feel that way too, right, that some of it's</p> <p>13 okay and some of it's over the line?</p> <p>14 A. I imagine so.</p> <p>15 Q. I mean, you've talked to</p> <p>16 people that feel the same way you do; right?</p> <p>17 A. Yes.</p> <p>18 Q. All right. So you remember</p> <p>19 that one time where he talked -- you say he</p> <p>20 talked about that there was a -- Well, you</p> <p>21 told me the story about a blind man. All</p> <p>22 right. Can you remember any other stories</p> <p>23 that you say y'all talked about?</p>	<p>1 Q. How did the conversation</p> <p>2 start?</p> <p>3 A. Exactly, I think he said:</p> <p>4 Have you -- Do you -- Have you ever saw the</p> <p>5 Dave Chappelle Show? And I said: Yeah. I</p> <p>6 saw it before. He said: Do you remember</p> <p>7 the scene about him being blind and black in</p> <p>8 the Ku Klux Klan rally? I said: Yeah, I</p> <p>9 saw it. And from there, the conversation</p> <p>10 went on to that, the phrase I gave you</p> <p>11 earlier.</p> <p>12 Q. Did you actually raise the</p> <p>13 issue of the Dave Chappelle Show on the</p> <p>14 first occasion to Ralph?</p> <p>15 A. No.</p> <p>16 Q. You've told me that you</p> <p>17 thought it wasn't funny, but you weren't</p> <p>18 offended, were you?</p> <p>19 A. I was offended by the word.</p> <p>20 Q. By the "N" word?</p> <p>21 A. Yes.</p> <p>22 Q. Not by the rest of it?</p> <p>23 A. I was offended by him saying</p>

14 (Pages 53 to 56)

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 57</p> <p>1 the "N" word, nigger.</p> <p>2 Q. Right. But not by the rest of</p> <p>3 the -- not by the recounting the rest of the</p> <p>4 Dave Chappelle skit; right? Do you see what</p> <p>5 I'm saying?</p> <p>6 A. I don't understand what you're</p> <p>7 saying.</p> <p>8 Q. I hear you saying that you</p> <p>9 were offended by him saying the "N" word,</p> <p>10 but you weren't offended by him relating to</p> <p>11 you the rest of the skit, were you?</p> <p>12 A. I was offended by the whole</p> <p>13 situation of the racial comments, I meant</p> <p>14 even the whole skit of the Dave Chappelle</p> <p>15 Show.</p> <p>16 Q. But not offended enough to</p> <p>17 complain to anybody; right?</p> <p>18 A. I talked to a friend about it.</p> <p>19 Q. Who is the friend?</p> <p>20 A. Ashley Sheffield.</p> <p>21 Q. Okay. And you told me about</p> <p>22 that?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. Do you have any reason to</p> <p>2 believe that Terry Robertson or Ralph</p> <p>3 Hudnall or Chad Reese was racist in any way?</p> <p>4 A. Before I was fired, I believed</p> <p>5 that, I believe that that's what that was</p> <p>6 going to, that I was going to be</p> <p>7 discriminated against.</p> <p>8 Q. Yeah. All right. That's not</p> <p>9 my question. And we'll get to that. My</p> <p>10 question is, do you have any reason to</p> <p>11 believe that Terry Robertson, Ralph Hudnall</p> <p>12 or Chad Reese were racist in any way?</p> <p>13 A. I've never heard -- I never</p> <p>14 heard Terry Robertson or Chad Reese make a</p> <p>15 racial comment.</p> <p>16 Q. Have you ever heard Ralph</p> <p>17 Hudnall make a racist comment?</p> <p>18 A. I've heard Ralph Hudnall make</p> <p>19 a racist comment as far as the Dave</p> <p>20 Chappelle Show.</p> <p>21 Q. Oh, the one you've already</p> <p>22 told me about?</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. What did you tell Ashley?</p> <p>2 A. That I didn't think Ralph</p> <p>3 Hudnall should be making comments like that.</p> <p>4 It was inappropriate in the workplace.</p> <p>5 Q. And you certainly knew that</p> <p>6 you could talk to Terry Robertson if</p> <p>7 something Ralph had done had offended you or</p> <p>8 bothered you and you wanted it to stop;</p> <p>9 right?</p> <p>10 A. I knew that he was available.</p> <p>11 Q. Did Terry -- Was Terry a good</p> <p>12 boss, in terms of being open door,</p> <p>13 available, if you had something that you</p> <p>14 needed to talk about, when he was in town?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. All right. Any other</p> <p>17 time that Ralph Hudnall did not treat you</p> <p>18 with respect throughout your whole</p> <p>19 employment?</p> <p>20 A. I can't recall right now.</p> <p>21 Q. Okay. Did Chad Reese always</p> <p>22 treat you with respect?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. But other than that,</p> <p>2 have you ever heard him making a racist</p> <p>3 statement in any way?</p> <p>4 A. To anybody? No.</p> <p>5 Q. To anybody. Have you ever</p> <p>6 heard of him making a racist statement to</p> <p>7 anybody about anything?</p> <p>8 A. No.</p> <p>9 Q. One night when you were</p> <p>10 working on the evening shift at 9:30 on a</p> <p>11 Friday night, approximately, did you call</p> <p>12 Ashley Sheffield at home?</p> <p>13 A. Yes.</p> <p>14 Q. And you just called her for</p> <p>15 personal reasons; right? I mean, you didn't</p> <p>16 have a business reason for calling her;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And did you just ask her what</p> <p>20 she was up to that weekend, things like</p> <p>21 that?</p> <p>22 A. Yes. I was on my break and I</p> <p>23 made a phone call to her.</p>

15 (Pages 57 to 60)

## FREEDOM COURT REPORTING

Page 65	Page 67
<p>1 Q. Okay. What did they say?</p> <p>2 A. They told me when I went to</p> <p>3 the office that Ashley had talked to Ralph.</p> <p>4 And they talked to me that Ashley had talked</p> <p>5 to Ralph that I had called her.</p> <p>6 And I asked them, I said: Why</p> <p>7 is that a problem? And if I remember</p> <p>8 correctly, they said that Ashley said she</p> <p>9 didn't think it was appropriate for me to</p> <p>10 call her by me being a supervisor in the</p> <p>11 cleanability area. It just -- We shouldn't</p> <p>12 talk like that.</p> <p>13 Q. Did you tell them that you</p> <p>14 hadn't intended to be offensive?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And did they just say:</p> <p>17 Just don't let it happen again, or words to</p> <p>18 that effect?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And was that the end of</p> <p>21 it, in terms of did it ever even come up</p> <p>22 again?</p> <p>23 A. Terry Robertson talked to me</p>	<p>1 begin with.</p> <p>2 Q. Okay. And after that meeting</p> <p>3 with Terry, did it ever come up again?</p> <p>4 A. No.</p> <p>5 Q. At all, during your</p> <p>6 employment?</p> <p>7 A. No.</p> <p>8 Q. Did the second shift at</p> <p>9 Euro-Pro end after a few months?</p> <p>10 A. Actually, it ended probably</p> <p>11 about a -- approximately a week after I</p> <p>12 talked to Terry about that incident.</p> <p>13 Q. Okay. At that point, did the</p> <p>14 company offer for you to go into life cycle</p> <p>15 testing?</p> <p>16 A. It was not an offer. It was</p> <p>17 that: We're going to put you in the life</p> <p>18 cycle test area.</p> <p>19 Q. All right. And this was in</p> <p>20 April of '04?</p> <p>21 A. I think, correct.</p> <p>22 Q. This was basically testing of</p> <p>23 all the other products and how they would</p>
Page 66	Page 68
<p>1 when he came back about it.</p> <p>2 Q. Around this same time period?</p> <p>3 A. I think it was like a couple</p> <p>4 of weeks. I don't know what the schedule</p> <p>5 was. I think it was like a week or two</p> <p>6 after he came back.</p> <p>7 Q. Okay. So, Chad and Ralph met</p> <p>8 with you when Terry was out of town?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And they told you,</p> <p>11 basically, just don't do it again, or words</p> <p>12 to that effect. And then Terry met with</p> <p>13 you, whenever he got back in town, and then</p> <p>14 tell me what was said in that conversation,</p> <p>15 same type thing?</p> <p>16 A. Exactly what Terry say, I</p> <p>17 can't recall. He said he heard about what</p> <p>18 had happened. And I don't -- I think he</p> <p>19 told me to be careful.</p> <p>20 Q. And did you assure him that</p> <p>21 you would?</p> <p>22 A. I explained to him what the</p> <p>23 situation was, and that it wasn't nothing to</p>	<p>1 last on the market, their reliability?</p> <p>2 A. Yes.</p> <p>3 Q. And were you excited about the</p> <p>4 opportunity?</p> <p>5 A. I was excited, yes.</p> <p>6 Q. And based on your skill set</p> <p>7 and your past experience, was it something</p> <p>8 -- was it a challenge that you wanted to</p> <p>9 take on?</p> <p>10 A. In the beginning.</p> <p>11 Q. And did you understand it as</p> <p>12 an opportunity to grow and advance in the</p> <p>13 company?</p> <p>14 A. Yes.</p> <p>15 Q. And didn't you, in fact, learn</p> <p>16 that Ralph Hudnall had sort of gotten his</p> <p>17 start before he made supervisor doing a</p> <p>18 similar type thing?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't recall that?</p> <p>21 A. No.</p> <p>22 Q. Did you view it as a promotion</p> <p>23 of sorts?</p>

17 (Pages 65 to 68)



## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 69</p> <p>1 A. No.</p> <p>2 Q. You did not?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. There was no more money, there</p> <p>6 wasn't a raise, it wasn't a promotion.</p> <p>7 Q. That position was not offered</p> <p>8 to anybody else, was it?</p> <p>9 A. I don't know.</p> <p>10 Q. As far as you know, it wasn't;</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. All right. And you were given</p> <p>14 a position description or a job description;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 (Defendant's Exhibit 2 was</p> <p>18 marked for identification</p> <p>19 purposes.)</p> <p>20 Q. All right. I'll show you what</p> <p>21 I'm marking as Defendant's Exhibit 2. Why</p> <p>22 don't you just -- You can put those up, if</p> <p>23 you don't mind. Thanks. Because I'm just</p>	<p style="text-align: right;">Page 71</p> <p>1 A. If my memory serves me</p> <p>2 correctly, it was only once.</p> <p>3 Q. Okay. All right. And would</p> <p>4 that have been where you expressed</p> <p>5 excitement in the new opportunity?</p> <p>6 A. When -- Yes.</p> <p>7 Q. Okay. And can you remember</p> <p>8 the specifics of what they talked about in</p> <p>9 that meeting?</p> <p>10 A. Specifically, Terry Robertson</p> <p>11 said that he need to get the life test</p> <p>12 system up and going. And they was going to</p> <p>13 move me from cleanability area into the life</p> <p>14 test system, to get it up and running.</p> <p>15 Q. Okay.</p> <p>16 A. And that's what I can recall</p> <p>17 specifically.</p> <p>18 Q. Okay. Do you remember Ralph</p> <p>19 adding anything to that discussion?</p> <p>20 A. I don't remember.</p> <p>21 Q. Okay. Did you have a -- Did</p> <p>22 you sit down with Ralph and Terry and walk</p> <p>23 through the job description? I'll ask that</p>
<p style="text-align: right;">Page 70</p> <p>1 going to -- It's the same stuff, though.</p> <p>2 MR. LIGHTFOOT: Do you need</p> <p>3 this, John?</p> <p>4 MR. COTTLE: It's the same</p> <p>5 thing in here?</p> <p>6 MR. LIGHTFOOT: It's the same</p> <p>7 stuff you've got.</p> <p>8 MR. COTTLE: Okay.</p> <p>9 Q. All right. Was this the</p> <p>10 position description that was given to you?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And who talked</p> <p>13 with you on the front end about this new</p> <p>14 opportunity for you? Was it --</p> <p>15 A. Can you rephrase that?</p> <p>16 Q. Sure. Well, did Terry and</p> <p>17 Ralph and Chad talk with you about this new</p> <p>18 opportunity? I know Ralph did, I just want</p> <p>19 to know who all talked with you about this?</p> <p>20 A. Ralph and Terry.</p> <p>21 Q. Ralph and Terry. Okay. And</p> <p>22 how many times did they talk with you before</p> <p>23 you began it, before you started doing it?</p>	<p style="text-align: right;">Page 72</p> <p>1 first.</p> <p>2 A. I remember seeing this. I</p> <p>3 don't remember that we sat down and walked</p> <p>4 through it.</p> <p>5 Q. Okay. Would that have been in</p> <p>6 the first meeting with Ralph and Terry or in</p> <p>7 a subsequent meeting with Ralph?</p> <p>8 A. I don't remember. I think</p> <p>9 this was after that meeting. I don't</p> <p>10 remember.</p> <p>11 Q. Okay. So, this would have</p> <p>12 probably been with just Ralph?</p> <p>13 A. I think. I don't recall</p> <p>14 actually when it happened or who I talked</p> <p>15 to.</p> <p>16 Q. Okay. And when Ralph or</p> <p>17 Terry, whoever was walking through this with</p> <p>18 you, did they sort of walk through these</p> <p>19 five main areas of responsibilities?</p> <p>20 MR. COTTLE: Object to the</p> <p>21 form. I think he said no one had walked</p> <p>22 through it with him.</p> <p>23 Q. Did Ralph discuss these five</p>

18 (Pages 69 to 72)

## FREEDOM COURT REPORTING

Page 73	Page 75
<p>1 areas with you?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you ask any</p> <p>4 questions about it?</p> <p>5 A. I think we talked about it. I</p> <p>6 don't remember asking any questions, but we</p> <p>7 did -- I think we did discuss it.</p> <p>8 Q. Okay. Did Ralph or Terry say</p> <p>9 words to you to the effect of -- in one of</p> <p>10 these initial meetings that they wanted you</p> <p>11 to take the life cycle testing to the next</p> <p>12 level?</p> <p>13 A. Yes.</p> <p>14 Q. And you felt, based on your</p> <p>15 skills and experience, that that was</p> <p>16 something that you could do; correct?</p> <p>17 A. Yes.</p> <p>18 Q. They also told you that if you</p> <p>19 need any help doing your job, you should</p> <p>20 rely on Ralph primarily as your supervisor;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And Chad Reese and Andras were</p>	<p>1 Q. All right. When was it that</p> <p>2 he was available, what one day?</p> <p>3 A. The project began --</p> <p>4 Q. -- in May; right?</p> <p>5 A. Right.</p> <p>6 Q. Okay. Was it somewhere in the</p> <p>7 start?</p> <p>8 A. He was beginning -- He was</p> <p>9 available from the start, in May. And the</p> <p>10 next day I came to work, he was not</p> <p>11 available. And he expressed that Ralph had</p> <p>12 told him that I was to do it by myself.</p> <p>13 Q. Okay. From those first</p> <p>14 meetings that you had with Ralph and Terry,</p> <p>15 was it clear to you that the life cycle</p> <p>16 testing was important to Euro-Pro?</p> <p>17 A. Yes.</p> <p>18 Q. Was it also clear to you that</p> <p>19 they wanted you to succeed in that role?</p> <p>20 A. Yes.</p> <p>21 Q. And wasn't that the reason why</p> <p>22 they said: We want to make these three</p> <p>23 folks available to you? Was that part of</p>
Page 74	Page 76
<p>1 also available to help you; correct?</p> <p>2 A. Ralph and Chad Reese was</p> <p>3 available. Andras, he was available in the</p> <p>4 beginning, but he became not available, for</p> <p>5 one day.</p> <p>6 Q. Okay. Let me try to break</p> <p>7 that down a little bit. You say Ralph and</p> <p>8 Chad were always available?</p> <p>9 A. Ralph and Chad was available.</p> <p>10 Q. Okay. You say --</p> <p>11 A. Andras was not always</p> <p>12 available.</p> <p>13 Q. Okay. Did Andras work there?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How was he unavailable?</p> <p>16 A. In the beginning of the</p> <p>17 project that I was working on, doing --</p> <p>18 building life tests, Andras became available</p> <p>19 for me for one day. And I expressed the</p> <p>20 fact that on this project, I needed an</p> <p>21 engineer on this project with me. For one</p> <p>22 day, Andras became available. The next day</p> <p>23 he was not available.</p>	<p>1 why you say that?</p> <p>2 A. There was two people available</p> <p>3 for me. Andras was not available for me.</p> <p>4 Q. Okay. Now, you sought the</p> <p>5 help of Brian McGee a lot during the life</p> <p>6 cycle testing, didn't you?</p> <p>7 A. If you want to call it a lot.</p> <p>8 Sometimes.</p> <p>9 Q. Well, on a weekly basis, you</p> <p>10 did, didn't you?</p> <p>11 A. No.</p> <p>12 Q. Well, he was regularly</p> <p>13 available to you; correct?</p> <p>14 A. No.</p> <p>15 Q. All right. How was he not</p> <p>16 available?</p> <p>17 A. He was working on another</p> <p>18 project. I didn't -- He wasn't available to</p> <p>19 work on a project with me. He wasn't</p> <p>20 regularly available.</p> <p>21 Q. Okay. But he helped you on</p> <p>22 several occasions, didn't he?</p> <p>23 A. On some occasions, yes.</p>

19 (Pages 73 to 76)



## FREEDOM COURT REPORTING

Page 77	Page 79
<p>1 Q. And he's an engineer, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, in terms of</p> <p>4 getting set up to do your new job, it was</p> <p>5 what was called a lab technician, wasn't it?</p> <p>6 A. Yes.</p> <p>7 Q. The first -- Let's see.</p> <p>8 Sometime within a month of your starting,</p> <p>9 the largest project that you were assigned</p> <p>10 was the steam cleaner life cycle testing;</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. When you first started on</p> <p>14 that, you had several meetings with Ralph</p> <p>15 and Chad to get you started; correct?</p> <p>16 A. Correct.</p> <p>17 Q. All right. And, let's see,</p> <p>18 was it at one of the earlier meetings when</p> <p>19 the group of you put together the diagram?</p> <p>20 A. I think it was, like, a week</p> <p>21 after when Chad came up with that sketch.</p> <p>22 Q. Okay. So, you knew that --</p> <p>23 Well, you knew actually going in that</p>	<p>1 Q. And then y'all have a</p> <p>2 technology that reduces it to a piece of</p> <p>3 paper, right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And what y'all do is,</p> <p>6 it looks like y'all sort of went through and</p> <p>7 set up the various stages that would need to</p> <p>8 be accomplished to complete the project; is</p> <p>9 that what it was?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And y'all agreed that</p> <p>12 these were the appropriate stages; correct?</p> <p>13 A. Correct.</p> <p>14 (Defendant's Exhibit 3 was</p> <p>15 marked for identification</p> <p>16 purposes.)</p> <p>17 Q. All right. I'll go ahead and</p> <p>18 just let you -- You can see it from a</p> <p>19 distance. I'll mark this as Defendant's</p> <p>20 Exhibit 3. That's the sketch we're talking</p> <p>21 about; correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And y'all all agreed on</p>
Page 78	Page 80
<p>1 building and installing the automated steam</p> <p>2 cleaner fixture was going to be a big part</p> <p>3 of your job; correct? You'll see it listed</p> <p>4 there about three-fourths of the way down.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So you said it was,</p> <p>7 what, maybe early on -- I can't remember</p> <p>8 what you said, maybe a couple of meetings</p> <p>9 into it this diagram was come up with?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So, the early meetings</p> <p>12 would have been with Ralph and Chad; is that</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And then you said maybe</p> <p>16 the third meeting is when y'all came up with</p> <p>17 this diagram; correct?</p> <p>18 A. We came up with that sketch,</p> <p>19 yes.</p> <p>20 Q. The sketch. Okay. And this</p> <p>21 was a schedule that y'all wrote on the white</p> <p>22 board; correct?</p> <p>23 A. Correct.</p>	<p>1 the project completion date of July 28th;</p> <p>2 correct?</p> <p>3 A. No.</p> <p>4 Q. Well, who came up with that</p> <p>5 date?</p> <p>6 A. Chad Reese.</p> <p>7 Q. Okay. You didn't disagree</p> <p>8 with that date, did you?</p> <p>9 A. Yes.</p> <p>10 Q. Well, you didn't say: That's</p> <p>11 not a good date, did you?</p> <p>12 A. I talked to Ralph Hudnall that</p> <p>13 no way I could finish that alone by that</p> <p>14 date.</p> <p>15 Q. Okay. And what did Ralph say?</p> <p>16 A. He said: Don't worry about</p> <p>17 it.</p> <p>18 Q. Okay.</p> <p>19 A. He said: It will be all</p> <p>20 right. Just do the best you can.</p> <p>21 Q. Okay. And was that where</p> <p>22 Ralph also told you that you could rely on</p> <p>23 other people to get help?</p>

20 (Pages 77 to 80)

## FREEDOM COURT REPORTING

Page 81	Page 83
<p>1 A. And I asked him: Could I get 2 an engineer on the project? And that's when 3 Andras had came into the project. 4 Q. Okay. 5 A. And the next day he was gone. 6 Q. All right. After y'all came 7 up with this sketch -- And you had input 8 into this sketch, didn't you? 9 A. No. 10 Q. Okay. Are you saying there's 11 some other part of this sketch or the 12 staging deadlines that you thought was wrong 13 or inappropriate? 14 A. I asked for a schematic or a 15 diagram from an engineer of how to build -- 16 or how to install the handles for the steam 17 cleaner and this is the sketch I came up 18 with. And I totally disagreed to Ralph 19 Hudnall that: This right here is 20 unprofessional. I don't know what to do 21 with this. 22 Q. Who drew this sketch? 23 A. Chad Reese.</p>	<p>1 is round. 2 Q. You didn't point out that 3 specific problem to Chad, did you? 4 A. Yes. 5 Q. What did Chad say? 6 A. Again, he said: I'm an 7 engineer. Go build it. 8 Q. So did Chad -- So Chad clearly 9 thought it would work; right? 10 A. Yes. 11 Q. Okay. Was it clear that Ralph 12 thought it would work as well? 13 A. It was not clear that Ralph 14 thought it was going to work. 15 Q. Did Ralph say he disagreed 16 with it? 17 A. Ralph had some -- I think 18 Ralph didn't say that he disagreed with it, 19 but he had some questions on whether it 20 would work or not. 21 Q. All right. After this 22 schematic was drawn, did you have a series 23 of meetings with Ralph about sort of going</p>
Page 82	Page 84
<p>1 Q. And Chad is an engineer; 2 right? 3 A. And that's what he told me. 4 He said: I'm an engineer. I'll draw you a 5 sketch. And he drew that in three minutes. 6 Q. Well, did you say: Chad, 7 that's not good enough? 8 A. I said: Chad, that's not good 9 enough and that's not going to work. 10 Q. You said that in front of Chad 11 and Ralph? 12 A. Yes. 13 Q. What did they say when you 14 said: That's not good enough? 15 A. Chad said: It will work. He 16 said: It will work. Go build it. 17 Q. Why did you say that wouldn't 18 work? 19 A. Because you have a ball coming 20 out of an air piston hitting a trigger. 21 There's no way that that ball is going to 22 ever be stable in hitting that trigger at 23 the exact same point every time, because it</p>	<p>1 forward and what was the basic set-ups of 2 the life test fixture? 3 A. I think so. After this 4 sketch, yes, I think so. 5 Q. Okay. And that would have 6 been, what, within the week or two right 7 after this sketch? 8 A. Yes. 9 Q. All right. And were those -- 10 Would some of them take all morning, or were 11 they one hour, or how long would those 12 meetings take? 13 A. Oh, not even an hour. It 14 wasn't no hour-long meetings. 15 Q. Okay. They were -- Would you 16 sit down with Ralph and talk through the 17 basics of sort of creating this fixture as 18 you were getting started? 19 A. Yes. 20 Q. Okay. All right. So, that is 21 somewhere in the -- Do you remember if that 22 was in early May? 23 A. Yes.</p>

21 (Pages 81 to 84)

## FREEDOM COURT REPORTING

Page 85

1 Q. Okay. So that was in early  
2 May. So, basically, the setup was for you  
3 to do this and have it done in about three  
4 months' time, is that correct; by the end of  
5 July, so May, June, July? Sounds like it's  
6 a little less, depending on when it was in  
7 early May; right?

8 A. Honestly, I don't know if this  
9 came off in early May. I think it was more  
10 like early June when the project had come  
11 about. I'm not for sure. But I think the  
12 project started in, like, early June. I'm  
13 not sure.

14 Q. Okay. After the series of  
15 meetings that you had at the beginning with  
16 Ralph, did you ever seek Ralph's help on the  
17 project?

18 A. Yes.

19 Q. All right. On how many  
20 occasions, after those early meetings, did  
21 you seek Ralph's help on the project?

22 A. Mostly -- I don't know how  
23 many occasions that I talked to Ralph about

Page 86

1 the project, but I had to consult with Ralph  
2 about anything that I wanted to do with the  
3 project.

4 Q. All right. I'll show you an  
5 e-mail --

6 MR. LIGHTFOOT: John, I  
7 produced this, didn't I?

8 MR. COTTLE: Yeah. If it's  
9 the one I think --

10 MR. LIGHTFOOT: I certainly  
11 meant to, if I didn't.

12 (Defendant's Exhibit 4 was  
13 marked for identification  
14 purposes.)

15 Q. All right. I'll show you an  
16 e-mail that I am showing you from late June.  
17 Did you ask Chad for some help on an  
18 occasion somewhere around June 28, 2004?

19 A. I asked Chad for the  
20 specifications of a steamer.

21 Q. Okay. And did he provide them  
22 to you?

23 A. Yes.

Page 87

1 Q. Okay. And is that what is  
2 noted there on the e-mail that's dated  
3 Monday, June 28, at 10:55 a.m.?

4 A. Correct.

5 Q. Okay. Then, after that, you  
6 sent him a response in which you asked him  
7 for some more information; correct?

8 A. Yes.

9 Q. All right. But his response  
10 is, that that information is not something  
11 he can give you because it changes and is  
12 variable and you've got to go figure that  
13 out yourself; correct?

14 A. No. I don't know if that was  
15 his response.

16 Q. Okay. You tell me how you  
17 interpret his response. It's up on the top  
18 of the page. They go backwards.

19 MR. COTTLE: It's just  
20 backwards.

21 A. Okay. If that's what he  
22 wrote, yes.

23 Q. Okay. On how many other

Page 88

1 occasions, after the initial meetings that  
2 you had with Chad and then Ralph, did you  
3 ever seek Chad's help with this project?

4 A. I consulted with Chad whenever  
5 I needed to buy equipment for the project,  
6 and Ralph.

7 Q. All right. How about, though,  
8 in terms of designing or the engineering of  
9 the project? Did you ever talk with Chad  
10 about that, other than this one occasion on  
11 June 28th?

12 A. Yes.

13 Q. How many times?

14 A. More than five. We  
15 probably --

16 Q. Less than ten?

17 A. Less than ten.

18 Q. All right. And then the times  
19 you talked with Ralph, would that be less  
20 than ten as well, about the design or --

21 A. I'm not sure.

22 Q. I'm sorry. Let me finish the  
23 question, if you don't mind.

22 (Pages 85 to 88)

## FREEDOM COURT REPORTING

Page 101	Page 103
<p>1 Q. Let me show you what I'm</p> <p>2 marking as Defendant's Exhibit 6. Well,</p> <p>3 hold on.</p> <p>4 As of July 31, or I guess the</p> <p>5 end of July -- As of the end of July, you</p> <p>6 did not have the steam cleaner life test</p> <p>7 project completed; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And you told that to Ralph;</p> <p>10 right?</p> <p>11 A. Before I started the project,</p> <p>12 it wasn't going to get finished at that</p> <p>13 time, yes.</p> <p>14 Q. In late July or August, when</p> <p>15 it wasn't completed, did Ralph tell you</p> <p>16 words to the effect of: Get it done as</p> <p>17 quickly as you can, even though we realize</p> <p>18 you're not going to meet this July 28th</p> <p>19 deadline?</p> <p>20 A. I can't recall that we ever</p> <p>21 talked about that.</p> <p>22 Q. Okay. Well, you understood it</p> <p>23 was of significant importance to the company</p>	<p>1 and working well, yes, I understood that.</p> <p>2 Q. Okay. And sometime around</p> <p>3 July 28th or early August, or whenever it</p> <p>4 became apparent it wasn't going to be done</p> <p>5 by then, did Ralph say words to you to the</p> <p>6 effect of: You need to be reporting to me</p> <p>7 on a weekly basis on the update as to how</p> <p>8 it's coming and how close we're getting to</p> <p>9 completion so that I can report to Terry</p> <p>10 Robertson where we stand?</p> <p>11 A. No. I never had that</p> <p>12 conversation.</p> <p>13 Q. All right. Did you understand</p> <p>14 that Ralph was reporting to Terry about how</p> <p>15 the design was going and how well it was</p> <p>16 working?</p> <p>17 A. I did not -- I didn't know</p> <p>18 that, no.</p> <p>19 Q. You didn't know that at all?</p> <p>20 A. No.</p> <p>21 (Defendant's Exhibit 6 was</p> <p>22 marked for identification</p> <p>23 purposes.)</p>
Page 102	Page 104
<p>1 that it be completed as quickly as possible;</p> <p>2 correct?</p> <p>3 A. Of course.</p> <p>4 Q. And you understood that it</p> <p>5 needed to work and work well; correct?</p> <p>6 A. Of course.</p> <p>7 Q. And you knew that Euro-Pro was</p> <p>8 number one in the world in steam cleaners;</p> <p>9 correct?</p> <p>10 A. I didn't know that exact -- I</p> <p>11 did not know that, no.</p> <p>12 Q. You didn't know they're the</p> <p>13 market leader in steam cleaners?</p> <p>14 A. No, actually, I didn't.</p> <p>15 Q. Did you know -- Did you know</p> <p>16 the reason why it was important that the</p> <p>17 steam cleaner life test be designed and</p> <p>18 constructed and working well as soon as</p> <p>19 possible?</p> <p>20 A. I mean, I understood that it</p> <p>21 should have been working well and done --</p> <p>22 that's anything that we should do, that we</p> <p>23 should do it like that, quickly as possible</p>	<p>1 Q. All right. Let me show you</p> <p>2 what I'm marking as Defendant's Exhibit 6.</p> <p>3 MR. LIGHTFOOT: You've got it,</p> <p>4 John.</p> <p>5 Q. Is this the evaluation you</p> <p>6 were given on -- somewhere around August 20</p> <p>7 -- August 31, 2004?</p> <p>8 (Off-the-Record discussion</p> <p>9 was held.)</p> <p>10 A. Ask the question again.</p> <p>11 Q. Sure. Is what I've just given</p> <p>12 you, which I've marked as Defendant's</p> <p>13 Exhibit 6, is that the evaluation that you</p> <p>14 were given somewhere around August 31, 2004?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And Ralph gave it to</p> <p>17 you; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And you signed it?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And you agreed with it?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And do you have any</p>

26 (Pages 101 to 104)



## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 105</p> <p>1 idea how he rated you compared to the other 2 employees that he rated? 3 A. No. 4 Q. Okay. And he talked about -- 5 He talked about, once again, your strengths; 6 is that correct? 7 A. Correct. 8 Q. And also talked about the 9 areas in which you needed improvement; 10 correct? 11 A. Correct. 12 Q. And you didn't disagree with 13 any of the areas in which you needed 14 improvement; correct? 15 A. Correct. 16 Q. Now, you encountered some 17 significant problems in designing the steam 18 cleaner life cycle test; correct? 19 A. Correct. 20 Q. And some of those problems 21 were within your control and some of those 22 were outside of your control; correct? 23 A. Correct.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Yeah, but you -- Let's see. 2 You made the decision on which parts to 3 order; correct? 4 A. No. Chad Reese made the 5 decision to order those parts. 6 Q. Well, was it your job, as the 7 designer of the life cycle test, or was it 8 Chad's job to order the parts? 9 A. It was my job to build the 10 life test fixture. Before the project, I 11 repeatedly asked for an engineer to do the 12 design and the schematics for the job, 13 correct. 14 Q. My question is, in terms of 15 ordering the correct parts, whose job would 16 that be? 17 MR. COTTLE: Which parts are 18 you talking about, now? 19 MR. LIGHTFOOT: Any of the 20 parts. 21 A. It would be left on me to 22 order the right parts. But I consulted with 23 Chad to order the parts.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. One of the ones that was 2 within your control would have been when you 3 ordered the wrong valves; correct? 4 A. I don't recall ordering wrong 5 valves. 6 Q. All right. 7 A. I don't recall. 8 Q. Okay. Do you recall ordering 9 parts that needed to be able to withstand a 10 very high temperature, but then it turns out 11 that the parts you ordered could not 12 withstand those temperatures? 13 A. Correct. 14 Q. Okay. Was that the valves? 15 A. Those are parts I consulted 16 with Chad Reese about, and they were -- I 17 was told to order those parts. 18 Q. Okay. Now, you didn't talk 19 with Chad about the number of -- the amount 20 of degree that it needed to withstand, did 21 you? That was part of your job; right? 22 A. Correct. I talked to Chad 23 Reese about that.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Are you saying that you 2 consulted with Chad before you ordered every 3 part? 4 A. Any part that was over a 5 hundred dollars, I had to let Terry 6 Robertson know, Ralph Hudnall know and Chad 7 Reese know. And just about every part on 8 that life test fixture was over a hundred 9 dollars. 10 Q. Did you design handles that 11 did not work properly? 12 A. No. 13 Q. Did you design the handles? 14 A. No. 15 Q. What role did you play in the 16 handles? 17 A. The handles was contracted out 18 to an independent contractor. They was 19 designed by an independent contractor. 20 Q. Did you try to do them first? 21 A. I tried to do what's on this 22 sketch that I was shown and it wouldn't 23 work, because Chad Reese told me to try it</p>

27 (Pages 105 to 108)

**FREEDOM COURT REPORTING**

<p style="text-align: right;">Page 109</p> <p>1 to see if it would work. I'm a technician, 2 not an engineer. 3 Q. Were the problems with the 4 handles that you used was that they weren't 5 as flexible as they needed to be? 6 A. The problem was, it was a 7 design flaw in the beginning, as I 8 previously expressed to Chad Reese at the 9 beginning of the project. 10 Q. Okay. So, you're blaming that 11 on Chad Reese, the handles; is that correct? 12 A. The handles -- This diagram, 13 this schematic, yes, this is Chad Reese. 14 This is a flaw in Chad Reese's design. 15 Q. How much time did you spend on 16 the handles? 17 A. I spent -- I don't know. I 18 don't have the exact time. 19 Q. Approximately? 20 A. I can't approximate. I mean, 21 I was on the project. So it was probably 22 all the time. 23 Q. Okay. Tell me about the</p>	<p style="text-align: right;">Page 111</p> <p>1 Reese, are you? 2 A. I was not aware that there was 3 a lot of construction problems on the life 4 test. 5 Q. Well, what were the problems 6 that y'all encountered in constructing the 7 life test for steam cleaners? 8 A. The beginning problem was the 9 holdup on the design of the handles. 10 Q. Okay. 11 A. I expressed the fact that I 12 think they need to be contracted out because 13 we don't have the tools or the equipment 14 here to do it. 15 Q. And did management report back 16 to you: We want you to construct them? 17 A. Management in the beginning 18 reported to me they wanted me to design this 19 sketch and see would it work. And I -- They 20 wanted me to put this sketch together on the 21 handle to see would it work and I did so, 22 and it did not work. 23 At that point, we did not have</p>
<p style="text-align: right;">Page 110</p> <p>1 problems in the design that would have been 2 your fault, not Chad Reese's fault, or in 3 the construction. 4 A. Like I said before, the 5 handles and everything was contracted out. 6 And it was all -- The engineers and me 7 looked at what the construction schematic 8 was. And I didn't see no problems with the 9 handles or the design of the handles, and 10 still don't. 11 Q. But they didn't work, did 12 they? 13 A. Yes, they did. 14 Q. You mean the ones that were 15 contracted out? 16 A. Yes. 17 Q. Okay. But the ones you had 18 before that didn't work? 19 A. No. But it was a design flaw 20 from Chad Reese. 21 Q. Well, to be clear, you're not 22 blaming every construction problem on the 23 life test for the steam cleaners on Chad</p>	<p style="text-align: right;">Page 112</p> <p>1 the materials there to make it work. And I 2 expressed that in order to get it done, a 3 way that we needed it done, we need to 4 contract it out. 5 Q. Okay. What other significant 6 problems arose with the construction of the 7 life test for steam cleaners? 8 A. I'm not aware of any other 9 construction problems of it, I guess. 10 Q. Sometime in November, did you 11 request a two-week vacation? 12 A. I requested a two-week 13 vacation, I think, way before November. 14 Q. Well, were you granted a 15 two-week vacation in November? 16 A. Yes. 17 Q. Around Thanksgiving? 18 A. Yes. 19 Q. Okay. You also asked Ralph 20 Hudnall if you could leave early the last 21 day of work; correct? 22 A. Correct. 23 Q. And Ralph said words to the</p>

28 (Pages 109 to 112)



## FREEDOM COURT REPORTING

Page 113	Page 115
<p>1 effect: No, not unless it's fully 2 operational; is that correct? 3 A. No. 4 Q. What did he say? 5 A. I went to a meeting with Ralph 6 and I explained to Ralph that there was a 7 situation going on with the life test that I 8 think that we could buy a different part, it 9 would have improved the dependability of the 10 life test. And I explained to him what the 11 part was, and how we need to do it. 12 And after that, I asked him -- 13 I told him I needed something to do before I 14 go on vacation, can I leave early? He said: 15 No -- He said: Not a problem. I'm going to 16 leave early, too, just shut everything down. 17 Q. Now, Ralph met with you the 18 morning -- that Friday morning before you 19 left for vacation; right, November the 19th? 20 A. Yes. That's the conversation 21 we just had, yes. 22 Q. Okay. And he told you that 23 before vacation, he needed to know about any</p>	<p>1 with you that you would be available for him 2 to talk to on vacation, if he needed you? 3 A. Correct. 4 Q. All right. Did you leave at 5 -- What time did you leave, noon? 6 A. I think lunchtime, yes. 7 Q. Now, are you -- Are you 8 claiming that you had permission to go? 9 A. Yes. 10 Q. From whom? 11 A. Ralph Hudnall. 12 Q. And how is it that you say he 13 gave -- What is it that -- How is it that 14 you say you have permission? 15 A. I asked him could I leave 16 early, I have some personal business to take 17 care of. He said: No problem, no problem, 18 I'm going to leave early, too. So just shut 19 everything down in the life test bay because 20 I'm leaving early, too. He had some 21 personal business to take care of. 22 Q. And is it your testimony that 23 he did not say: It's okay to leave early,</p>
Page 114	Page 116
<p>1 problems with the life cycle for steam 2 cleaners; correct? 3 A. Correct. And I told him the 4 problems I had with the steam cleaner. 5 Q. All right. What problems did 6 you tell him in that meeting that morning? 7 A. That there was -- We needed to 8 buy a current censor that would actually 9 turn the life test system on and off better 10 than what we had. And he agreed, that would 11 be a better equipment to buy. 12 Q. Okay. Are there any other 13 problems that y'all discussed? 14 A. Not as I can recall. 15 Q. Okay. Did he also tell you 16 that it was -- Did he tell you it was 17 important that they be -- that the test be 18 fully operational before you went on 19 vacation? 20 A. No. 21 Q. Words to that effect? 22 A. No. 23 Q. All right. He did confirm</p>	<p>1 if the life test was running, or if you were 2 aware of any minor problems that needed to 3 be dealt with? 4 A. No. He never told me that. 5 We had discussed a minor problem earlier, 6 but that was not an issue. 7 Q. All right. On Monday morning, 8 November 22nd, Ralph called you at home; 9 correct? 10 A. I never received a phone call 11 from Ralph while I was on vacation. Not as 12 I know of. I can't recall if I did ever 13 receive a phone call from Ralph. 14 Q. Do you recall Ralph calling 15 you and telling you that the wires were 16 disconnected on Monday, November 22nd, and 17 reaching you and talking to you at your 18 home? 19 A. I don't remember him ever 20 calling me while I was on vacation. 21 Q. Okay. So, you just -- You 22 don't recall that? 23 A. I don't recall that.</p>

29 (Pages 113 to 116)

## FREEDOM COURT REPORTING

Page 117	Page 119
<p>1 Q. You're not denying that, you 2 just don't recall it? 3 A. I don't recall that. 4 Q. Okay. You had disconnected 5 the wires before vacation; correct? 6 A. Correct. 7 Q. Okay. And did you report to 8 Ralph that the life test was not safe to 9 run? 10 A. I reported that to him earlier 11 before I left, that we needed a current 12 censor to sense the current in the life 13 test. And right at that moment, I don't 14 think it was safe to run. 15 Q. Okay. Did you also tell him 16 that on the Monday, do you recall? 17 A. That -- I don't recall Ralph 18 ever calling me while I was on vacation. 19 Q. Okay. Do you recall saying 20 words to him on that Monday that you would 21 look into it after your vacation? 22 A. I don't recall Ralph ever 23 calling me while I was on vacation.</p>	<p>1 A. It was that Friday I left 2 early on vacation. 3 Q. And is that when they thought 4 he had had a heart attack? 5 A. Yes. 6 Q. Did you talk with Chad about 7 anything business related? 8 A. I talked to him about the 9 situation about the current censor. And he 10 said: The current censor would work a whole 11 lot better. He agreed. 12 Q. Was he physically in a 13 hospital bed when you talked to him? 14 A. Yes. 15 Q. You didn't tell him you had 16 disconnected the wires, did you? 17 A. We didn't get deep into it. 18 He asked me how is things going, I asked him 19 how he was. We talked about a lot of 20 things. 21 Q. Is the answer no, you didn't 22 tell him you disconnected the wires? 23 A. No.</p>
Page 118	Page 120
<p>1 Q. Okay. Do you recall having a 2 discussion with Ralph about talking with 3 Chad Reese? 4 MR. COTTLE: At what time? 5 Q. On Monday, or at any time 6 after you went on vacation. 7 A. As I said before, I don't 8 recall ever talking to Ralph while I was on 9 vacation. 10 Q. Fair enough. Where did you go 11 on vacation? 12 A. Nowhere. 13 Q. Okay. And you only had one 14 home phone number; correct? 15 A. Correct. 16 Q. What is your home phone 17 number, or what was it then? 18 A. Okay. Area code (334) 19 863-4893. 20 Q. Did you go visit Chad Reese at 21 the hospital? 22 A. Yes. 23 Q. What day?</p>	<p>1 Q. I may be asking it wrong. Am 2 I correct that you did not ask him -- I'm 3 sorry. Let me start over. Am I correct 4 that you did not tell him that you had 5 disconnected the wires; is that correct? 6 A. I don't remember ever telling 7 him that. I may have. I don't remember. 8 Q. But you say you all did talk 9 about the current censor? 10 A. Correct. 11 Q. And what was said about that? 12 A. He thought that it would be 13 better. He agreed. 14 Q. Do you recall when the company 15 got the LabVIEW software from Auburn? 16 A. Do I recall when they got the 17 LabVIEW software? 18 Q. Yes. 19 A. No, I don't recall. 20 Q. Were you aware that the 21 company had gotten LabVIEW software at some 22 time? 23 A. Yes.</p>

30 (Pages 117 to 120)

## FREEDOM COURT REPORTING

Page 129	Page 131
<p>1 meeting: Yes, we can't allow Victor to pick 2 up after ourselves. So we need to keep our 3 area clean when we go working in those 4 areas. 5 Q. Did you return from vacation 6 on December 1, 2004? 7 A. Correct. 8 Q. Was that a Monday? 9 A. Correct. 10 Q. Did you come -- Did you start 11 somewhere around 7:30 in the morning? 12 A. I came in around 7:30 in the 13 morning, yes. 14 Q. All right. Were you called 15 into Terry's office? 16 A. Yes. 17 Q. And was Chad Reese in there? 18 A. Yes. 19 Q. All right. Did Terry -- What 20 did Terry tell you? 21 A. I think Terry said that they 22 needed to eliminate the technician in that 23 area and hire an engineer. And I asked him:</p>	<p>1 informed Ralph of the issues like you were 2 supposed to before you went on vacation? 3 A. And I explained to him I did. 4 Q. Okay. Did he explain to you 5 about the wires being disconnected and how 6 it wouldn't run? 7 A. Correct. 8 Q. Did he explain to you about 9 how Ralph had to rip out the wires and 10 rebuild the wiring? 11 A. I don't remember that. 12 Q. Did you ever learn that, that 13 that had happened? 14 A. No. 15 Q. All right. So he told you 16 about those things. And did he tell you 17 that he thought that was inappropriate on 18 your part, that you had done those things? 19 A. Yes. 20 Q. All right. And what was your 21 response to that? 22 A. I explained to him that I 23 talked to Ralph about that before I left. I</p>
Page 130	Page 132
<p>1 Do you mean eliminate me? And he responded: 2 Yes. 3 Q. All right. Did he tell you 4 about -- that he felt that you had not 5 performed well doing -- completing the life 6 cycle for steam cleaner? 7 A. Yes. 8 Q. What did he say about that? 9 A. He thought that it was -- cost 10 too much. And I responded to him: I didn't 11 -- I did not have a budget plan or a maximum 12 or a minimum of how much it should cost. He 13 thought, he said, that it took too long. 14 Q. Did he talk about the 15 condition that you left the test in before 16 you went on vacation? 17 A. Yes. And I explained to him I 18 talked to Ralph Hudnall about that. 19 Q. Did he say that you had left 20 it not fully operational, or words to that 21 effect? 22 A. Words to that effect. 23 Q. Did he say that you had not</p>	<p>1 explained to him that Ralph said it was okay 2 for me to leave early that day because he 3 was leaving early that day, too. 4 And he said: Well, you didn't 5 tell me. And my thoughts were that I 6 thought I was supposed to report to Ralph. 7 Q. Did he talk to you about Ralph 8 talking to you while on vacation? 9 A. I can't recall. 10 Q. All right. Any other -- 11 Anything else that was said by Terry or you 12 at the start of that conversation? 13 A. I can't recall of anything 14 else. 15 Q. At some point, did you jump up 16 and raise your voice? 17 A. No, I jumped up and gave him 18 my keys and left. 19 Q. What did you say? What words 20 did you say when you jumped up? 21 A. I can't recall. 22 Q. What comments did you make 23 about the life cycle for steam cleaners</p>

33 (Pages 129 to 132)

# FREEDOM COURT REPORTING

<p style="text-align: right;">Page 137</p> <p>1 Q. And he was always available to 2 help; correct? 3 A. Not always. 4 Q. For the most part? 5 A. Correct. 6 Q. Okay. And he told you Andras 7 would be available? 8 A. He assigned Andras for one 9 day. 10 Q. Okay. And you knew Chad Reese 11 was available? 12 A. Correct. 13 Q. Tell me the information that 14 you have from any source that Euro-Pro's 15 decision to terminate your employment was 16 based on your race. 17 A. Any information I have? 18 Q. Yeah. From any source that 19 makes you think that Euro-Pro's decision was 20 in any way based on your race? 21 A. I don't have any information. 22 Q. The only claim that you're 23 making in this lawsuit of discrimination is</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Oh, was she on life testing? 2 A. No. 3 Q. What was she in? 4 A. She was a lab technician. She 5 worked inside the lab. 6 Q. Oh, so, she wasn't considered 7 in either of those other two categories? 8 A. What other two categories? 9 I'm sorry. 10 Q. I said cleanability or life 11 testing -- life cycle testing. 12 A. No. 13 Q. All right. What performance 14 problems are you claiming that she had -- 15 Well, tell me in which way you believe she 16 was treated more favorably than you. 17 A. I believe that she would come 18 in late every day, almost every day, five, 19 ten, fifteen, twenty minutes late. And 20 she's never got -- I don't believe, I don't 21 know that she got written up or anything for 22 that. 23 She also got caught numerous</p>
<p style="text-align: right;">Page 138</p> <p>1 that this -- that your termination was 2 unfair and based on your race; correct? 3 A. Correct. 4 Q. Are you aware of any white 5 employees who did the same things you did, 6 and was similarly situated to you, who was 7 treated more favorably than you? 8 A. Yes. 9 Q. Who is that? 10 A. I believe that Ashley 11 Sheffield was treated more favorably than 12 me. 13 Q. Anybody else? 14 A. No. 15 Q. Okay. Now, Ashley Sheffield, 16 was she an hourly employee or salaried 17 employee? 18 A. Salary, I believe. 19 Q. She was a technician? 20 A. Yes. 21 Q. All right. And she was in 22 cleanability; right? 23 A. No.</p>	<p style="text-align: right;">Page 140</p> <p>1 times on the Internet. I never knew that 2 she ever got written up or anything after 3 that. 4 Q. Do you know one way or the 5 other whether she was ever spoken to by 6 management about what you say is coming in 7 late every day? 8 A. I think she was spoken to by 9 management once. 10 Q. Okay. Are you aware of that 11 ever being a problem after that? 12 A. Yes. If she continued. 13 Q. Did you keep up with her when 14 she started and when she stopped each day? 15 A. No. 16 Q. Did you supervise her? 17 A. No. 18 Q. Were you in the same area as 19 her? 20 A. No. 21 Q. Are you aware of her ever 22 being spoken to about being on the Internet? 23 A. Yes.</p>

35 (Pages 137 to 140)



## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 141</p> <p>1 Q. Are you aware of her ever 2 doing it after that? 3 A. Yes. 4 Q. All right. Did you -- But you 5 didn't work in the same department as she 6 did? 7 A. No. 8 Q. Are you aware of it ever 9 affecting the performance of her job? 10 A. No. 11 Q. Are you aware of what her 12 performance evaluations were like, in terms 13 of how she was performing her job? 14 A. No. 15 Q. All right. Any other white 16 employees that you're aware of who you would 17 say had performance issues or violated rules 18 and that weren't terminated? 19 A. Not that I'm aware of, no. 20 Q. Did anyone ever tell you that 21 race was a factor in the company's decision 22 to terminate your employment? 23 A. I don't think I understand the</p>	<p style="text-align: right;">Page 143</p> <p>1 A. I was told when I was fired I 2 was going to be replaced by an engineer. 3 Q. That was in that meeting with 4 Terry Robertson and Chad Reese? 5 A. Yes. 6 Q. You never complained to 7 Euro-Pro about race discrimination at any 8 time during your employment, did you? 9 A. No. 10 Q. Did you ever tell jokes in the 11 workplace, jokes of a racial nature? 12 A. No. 13 Q. Did you ever tell them outside 14 the work place, but with folks that you 15 worked with? 16 A. No. 17 Q. Do you use the "N" word, ever? 18 A. No. 19 Q. Have you ever? 20 A. I'm sure I have said it. I've 21 said it in this deposition before. 22 Q. Other than this deposition? 23 A. Yeah. Yes.</p>
<p style="text-align: right;">Page 142</p> <p>1 question. 2 Q. Well, do you have any 3 information from any other source, whether 4 you know it or whether someone else knows 5 it, that leads you to think that race had 6 anything to do with your termination? 7 A. I think so, yes. 8 Q. Yeah, but -- And I'm asking 9 you, do you have any basis for saying that, 10 other than just your subjective belief and 11 what you told me about Ashley Sheffield 12 being moved into the position after that? 13 A. No. Not at this time, no. 14 Q. Is there any other way in 15 which you believe Euro-Pro discriminated 16 against you on the basis of race at any 17 time? 18 A. No. 19 Q. Are you aware who took your 20 place at Euro-Pro? 21 A. No. 22 Q. Do you even know if you were 23 replaced?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. You use it with your -- Have 2 you used it with your friends? 3 A. No. 4 Q. When is it that you have used 5 it? 6 A. If it's in context when the 7 "N" word has been used or -- I don't call my 8 friends the "N" word. I don't do that. But 9 if it's a subject matter that's dealing with 10 the "N" word, I have used it. 11 Q. Have you talked with your 12 friends about the Dave Chappelle Show? 13 A. No. 14 Q. Did you talk with Ashley 15 Sheffield and other coworkers about the Dave 16 Chappelle Show fairly regularly while it was 17 on TV? 18 A. No. 19 Q. Was that a common subject 20 amongst the employees at the office, whether 21 you were a part of it or not, about the Dave 22 Chappelle Show? 23 A. It was a common subject with</p>

36 (Pages 141 to 144)

## FREEDOM COURT REPORTING

Page 161	Page 163
<p>1 Q. In fact, part of your job was</p> <p>2 to help create it so that there would be a</p> <p>3 design that would work for steam cleaners;</p> <p>4 correct?</p> <p>5 A. No.</p> <p>6 Q. That wasn't your job?</p> <p>7 A. Well, it was my job to come up</p> <p>8 with a solution. My job -- The independent</p> <p>9 contractors did all the blueprints and</p> <p>10 schematics for the steam cleaner fixtures.</p> <p>11 I expressed to Ralph and Terry I never did</p> <p>12 any kind of design. I'm not an engineer,</p> <p>13 I'm a technician.</p> <p>14 Q. Well, you understood going in</p> <p>15 that Euro-Pro was hiring you as a</p> <p>16 technician, and not hiring an engineer, to</p> <p>17 come up with this steam cleaner fixture?</p> <p>18 MR. COTTER: Going into what,</p> <p>19 now, his job or this project?</p> <p>20 MR. LIGHTFOOT: This project.</p> <p>21 Q. Going into this project, you</p> <p>22 understood that it was you, as a lab</p> <p>23 technician, that they were expecting to come</p>	<p>1 A. Correct.</p> <p>2 Q. That was the whole point;</p> <p>3 correct?</p> <p>4 A. I don't know what the whole</p> <p>5 point was. But I was designed for the -- I</p> <p>6 was put in -- tasked with that project, yes.</p> <p>7 Q. Ashley Sheffield was still a</p> <p>8 temp after you were made permanent; correct?</p> <p>9 A. Ashley Sheffield was already</p> <p>10 made permanent, I think, before I was made</p> <p>11 permanent.</p> <p>12 Q. Okay. Do you know if it was</p> <p>13 around the same time?</p> <p>14 A. I think it was actually the</p> <p>15 same time or the same actual week.</p> <p>16 Q. Sometime in April -- around</p> <p>17 April of '04?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And she was never the</p> <p>20 lead person at any time, was she?</p> <p>21 A. No.</p> <p>22 Q. And did you understand whether</p> <p>23 her pay was lower than yours or not?</p>
Page 162	Page 164
<p>1 up with this steam cleaning fixture, not an</p> <p>2 engineer; right?</p> <p>3 A. No. I did not understand</p> <p>4 that. I did not understand that was the</p> <p>5 reason -- That was not even the case. They</p> <p>6 knew that a technician that has no</p> <p>7 experience in this would not come up with a</p> <p>8 design for this.</p> <p>9 Q. What did you think your job</p> <p>10 was with regard to this steam clean fixture?</p> <p>11 It was to build it, wasn't it?</p> <p>12 A. It was to build it correctly.</p> <p>13 Q. Okay. And there was no</p> <p>14 schematic, in terms of how to take steps</p> <p>15 one, two, three, four or an already- ready</p> <p>16 drawing?</p> <p>17 A. An engineer does that.</p> <p>18 Q. All right. Was an engineer</p> <p>19 assigned to build that fixture or were you</p> <p>20 assigned to build that fixture?</p> <p>21 A. I was assigned that fixture, I</p> <p>22 was assigned that project, yes.</p> <p>23 Q. Not an engineer?</p>	<p>1 A. We don't -- We didn't talk</p> <p>2 about that.</p> <p>3 Q. You didn't talk about that</p> <p>4 with her?</p> <p>5 A. No.</p> <p>6 Q. When you were lead person over</p> <p>7 cleanability you had more responsibility</p> <p>8 than she did; correct?</p> <p>9 A. It's safe to say correct. I</p> <p>10 don't know what her responsibilities was.</p> <p>11 Q. Yeah. But even -- You knew</p> <p>12 you had more responsibility than she did?</p> <p>13 A. No, I didn't know what her</p> <p>14 responsibilities was. I knew what my</p> <p>15 responsibilities was.</p> <p>16 Q. Right.</p> <p>17 A. Right.</p> <p>18 Q. But you were giving out -- For</p> <p>19 instance, you were giving out assignments</p> <p>20 to, what, seven people; right?</p> <p>21 A. Correct.</p> <p>22 Q. And she didn't have anything</p> <p>23 like that? She didn't have responsibilities</p>

41 (Pages 161 to 164)



## FREEDOM COURT REPORTING

Page 165	Page 167
<p>1 like that, did she?</p> <p>2 A. No.</p> <p>3 Q. Okay. When you became the lab</p> <p>4 technician for the life cycle testing, you</p> <p>5 had more responsibility than Ashley</p> <p>6 Sheffield in her job, didn't you?</p> <p>7 A. I assume so, yes.</p> <p>8 Q. And you dealt with more</p> <p>9 projects than she did, didn't you?</p> <p>10 A. Correct.</p> <p>11 Q. And you had more experience</p> <p>12 than she did, didn't you?</p> <p>13 A. Correct.</p> <p>14 Q. And you had more education</p> <p>15 than she did, didn't you, at that time?</p> <p>16 A. No, I think, if my memory</p> <p>17 serves me correctly, we both had an</p> <p>18 associate's degree in technical engineering</p> <p>19 technology.</p> <p>20 Q. Do you remember going to the</p> <p>21 EEOC, Mr. Smith?</p> <p>22 A. Correct. Yes.</p> <p>23 Q. Did you tell the EEOC the</p>	<p>1 called in sick and never showed to work.</p> <p>2 More than five or six occasions I can think</p> <p>3 of off the top of my head. I'm pretty sure</p> <p>4 there was more.</p> <p>5 And any other job that I ever</p> <p>6 worked at, anybody that would show up late</p> <p>7 like that, and call in to work almost once a</p> <p>8 week or twice a week, would be terminated.</p> <p>9 Q. What time period -- Are you</p> <p>10 talking about when y'all were in</p> <p>11 cleanability together?</p> <p>12 A. When we was in cleanability</p> <p>13 together and also when I was in life</p> <p>14 testing.</p> <p>15 Q. Well, you said it happened</p> <p>16 five or six times. Are you talking about --</p> <p>17 A. I said off the top of my head.</p> <p>18 I'm pretty sure it's more than that.</p> <p>19 Q. Was that in cleanability?</p> <p>20 A. In cleanability and also when</p> <p>21 I was in life testing.</p> <p>22 Q. Okay. When you were in life</p> <p>23 testing, you were working a different area</p>
Page 166	Page 168
<p>1 truth when you gave them your charge?</p> <p>2 A. As far as I know, yes.</p> <p>3 Q. You're not claiming in this</p> <p>4 lawsuit, are you, that Dave Richards was</p> <p>5 treated more favorably than you, are you?</p> <p>6 A. David Richards, I believe so,</p> <p>7 yes.</p> <p>8 Q. Are you claiming he was a</p> <p>9 white employee that was treated more</p> <p>10 favorably than you?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Are there any other</p> <p>13 employees that you're claiming were treated</p> <p>14 more favorably than you?</p> <p>15 A. Not as I can remember, no.</p> <p>16 Q. Okay. So, are you claiming</p> <p>17 that Dave Richards or Ashley Sheffield was</p> <p>18 treated more favorable than you?</p> <p>19 A. Both.</p> <p>20 Q. All right. How is it that you</p> <p>21 allege that David Richards was treated more</p> <p>22 favorably than you?</p> <p>23 A. David Richards, numerous times</p>	<p>1 than he was; right?</p> <p>2 A. But I could see what's going</p> <p>3 on, yes.</p> <p>4 Q. You weren't his supervisor,</p> <p>5 were you?</p> <p>6 A. No.</p> <p>7 Q. Was he one of the employees</p> <p>8 that -- Was he in -- Was he in cleanability</p> <p>9 at the same time you were in cleanability,</p> <p>10 or was he hired later?</p> <p>11 A. Let me think. I'm not sure.</p> <p>12 Q. As far as you know, you were</p> <p>13 never over him?</p> <p>14 A. No.</p> <p>15 Q. You were not ever his</p> <p>16 supervisor or lead person?</p> <p>17 A. I don't think so.</p> <p>18 Q. Okay. So, the time we're</p> <p>19 talking about, when you say five or six</p> <p>20 times, then you're talking about when you</p> <p>21 were in life cycle and he was a temp in</p> <p>22 cleanability; is that correct?</p> <p>23 A. That's correct.</p>

42 (Pages 165 to 168)

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 169</p> <p>1 Q. Was he ever even made a 2 permanent employee while you were there? 3 A. I'm not sure when he was made 4 permanent. 5 Q. And his job certainly didn't 6 carry the responsibilities that yours did; 7 correct? 8 A. Correct. 9 Q. What was his job as a temp in 10 cleanability? 11 A. He recorded data, picked up 12 dirt and sand and -- off the vacuum -- off 13 of carpets and recorded the vacuum cleaner 14 results. 15 Q. The things you did, like, the 16 first month? 17 A. Correct. 18 Q. Any other reason that you 19 think -- that you claim that Mr. Richards 20 was treated more favorably than you? 21 A. Other than him being white, 22 no. 23 Q. Did you ever talk with any of</p>	<p style="text-align: right;">Page 171</p> <p>1 A. Correct. 2 Q. I believe you also told me 3 that you're not aware of any other racist 4 statements or jokes or comments that were 5 ever made by anyone while you were at 6 Euro-Pro; is that correct? 7 A. Not as I can recall, no. 8 Q. On your initial disclosures 9 you list James Lee, I guess he's the EEOC 10 investigator, as someone who may have 11 information that supports your claim. What 12 would -- What does James Lee have to say 13 about your claims, if you know? 14 A. I have no idea what you're 15 talking about. 16 MR. LIGHTFOOT: John, is he 17 just listed because he was the EEOC -- 18 MR. COTTLE: Yeah. I mean, 19 you know -- And that's a document I 20 prepared. Victor didn't have anything to do 21 with that, other than it's based on what he 22 told me. 23 I listed him out of abundance</p>
<p style="text-align: right;">Page 170</p> <p>1 his supervisors to know how they evaluated 2 his performance? 3 A. No. That's something that I 4 didn't -- That's none of my business. 5 Q. Did you ever talk to Ashley 6 Sheffield's supervisors to know how they 7 evaluated her performance? 8 A. No. 9 Q. Are you aware of either Ashley 10 Sheffield or Dave Richards telling their 11 supervisor they would do something and then 12 not doing it? 13 A. I'm not aware of that, no. 14 Q. Are you aware of Ashley 15 Sheffield or Dave Richards ever failing to 16 do a big project that they were assigned by 17 their supervisor in a timely and good 18 manner? 19 A. No. 20 Q. You told me about what you 21 claim was a -- you said a racially 22 inappropriate thing that you thought Ralph 23 Hudnall said to you. Do you remember that?</p>	<p style="text-align: right;">Page 172</p> <p>1 of precaution. I don't have any idea that 2 he knows anything more than -- I mean, he 3 obviously knows something about it because 4 he conducted an investigation. 5 Q. What were you making at 6 Euro-Pro at the time you were terminated? 7 A. Twenty-eight thousand, six 8 hundred. 9 Q. All right. I attached to your 10 deposition notice a request for production 11 of documents. Did you review those before 12 this deposition? 13 A. Yes. 14 Q. The requests? 15 A. Yes. 16 Q. Okay. As I understand from 17 John earlier, you don't have any responsive 18 documents except for tax returns, which 19 you'll be getting to me. So I just want to 20 make sure about that. 21 A. Okay. 22 Q. Sort of an overall question 23 that would cover a lot of these is: Do you</p>

43 (Pages 169 to 172)

**FREEDOM COURT REPORTING**

Page 177	Page 179
<p>1 A. In February.</p> <p>2 Q. -- February? And did some of</p> <p>3 the Euro-Pro employees come to the funeral?</p> <p>4 A. Correct.</p> <p>5 Q. Who came?</p> <p>6 A. They came to the wake.</p> <p>7 Q. To the wake. I'm sorry. Who</p> <p>8 came to the wake?</p> <p>9 A. Mason.</p> <p>10 Q. Mason.</p> <p>11 A. Brian.</p> <p>12 Q. Brian McGee?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. I think Eric, but I'm not</p> <p>16 sure.</p> <p>17 Q. Eric?</p> <p>18 A. I don't know Eric's last name.</p> <p>19 Q. Do you know Mason's last name?</p> <p>20 A. No.</p> <p>21 Q. Did you ever go over to Ralph</p> <p>22 Hudnall's house?</p> <p>23 A. Yes.</p>	<p>1 A. I'm pretty sure it was.</p> <p>2 Q. Was that in '03?</p> <p>3 A. It was right after I got</p> <p>4 hired, I think.</p> <p>5 Q. Yeah. So it would have been</p> <p>6 '03, if it was the Christmas party, I guess.</p> <p>7 Have you ever been convicted</p> <p>8 of a crime?</p> <p>9 A. Yes.</p> <p>10 Q. What was that?</p> <p>11 A. In 1991 or '92, for DUI.</p> <p>12 Q. Which county?</p> <p>13 A. San Diego County.</p> <p>14 Q. Is that in California?</p> <p>15 A. California.</p> <p>16 Q. Is that while you were in the</p> <p>17 Navy?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did you ever serve any</p> <p>20 time?</p> <p>21 A. Overnight.</p> <p>22 Q. Any other convictions?</p> <p>23 A. Gadsden, Alabama. Public</p>
Page 178	Page 180
<p>1 Q. For what?</p> <p>2 A. We was having a -- I think it</p> <p>3 was a Christmas party. And I didn't want to</p> <p>4 drive all the way back home. He let me come</p> <p>5 over and change clothes -- take a shower and</p> <p>6 change clothes.</p> <p>7 Q. Did you appreciate him doing</p> <p>8 that?</p> <p>9 A. Correct.</p> <p>10 Q. Did you consider him a friend</p> <p>11 through work?</p> <p>12 A. I considered him an associate,</p> <p>13 yes.</p> <p>14 Q. An associate?</p> <p>15 A. I mean --</p> <p>16 Q. I mean, were y'all on friendly</p> <p>17 terms?</p> <p>18 A. We was on -- Yes, yes.</p> <p>19 Q. I mean, you didn't hesitate to</p> <p>20 go to his house and shower, did you?</p> <p>21 A. After I asked him, no.</p> <p>22 Q. And when was that? You said</p> <p>23 it was a Christmas party?</p>	<p>1 intoxication.</p> <p>2 Q. When was that, approximately?</p> <p>3 A. '97. Around '97, '98.</p> <p>4 Q. Where were you when you were</p> <p>5 arrested?</p> <p>6 A. At a nightclub.</p> <p>7 Q. Were you incarcerated?</p> <p>8 A. Overnight.</p> <p>9 Q. Any other convictions?</p> <p>10 A. No.</p> <p>11 Q. Did you keep a copy of the</p> <p>12 documents that you sent the EEOC?</p> <p>13 A. I think so.</p> <p>14 MR. LIGHTFOOT: Will you get</p> <p>15 me those, please, along with the tax</p> <p>16 returns, John?</p> <p>17 MR. COTILE: What documents</p> <p>18 did you send to the EEOC?</p> <p>19 THE WITNESS: I did not send</p> <p>20 anything to the EEOC.</p> <p>21 A. You asked me did I keep the</p> <p>22 documents that the EEOC or that I sent the</p> <p>23 EEOC?</p>

45 (Pages 177 to 180)

## FREEDOM COURT REPORTING

Page 181	Page 183
<p>1 Q. Oh, I asked you that you sent 2 the EEOC. 3 A. Oh, no. I don't have any 4 documents that I sent the EEOC. 5 Q. Okay. You kept some documents 6 they sent you? 7 A. Correct. I'm sorry. I 8 misunderstood the question. 9 MR. LIGHTFOOT: Same thing, 10 though, John, would you produce those as 11 well. 12 MR. COTTLE: I produced that. 13 I mean, all I have is -- 14 MR. LIGHTFOOT: The Right To 15 Sue Notice. 16 MR. COTTLE: Yeah. That's all 17 I've got. Now, I've got some 18 correspondence. I might not have given you 19 this. I don't know. 20 MR. LIGHTFOOT: Okay. 21 MR. COTTLE: Let me just let 22 you look at it. 23 MR. LIGHTFOOT: Sure.</p>	<p>1 A. No. 2 MR. COTTLE: I can tell you 3 that I did not, after I had a conversation 4 about that with Ms. Rozenzweig. 5 MR. LIGHTFOOT: All right. 6 Why don't you give me a few minutes. I 7 think I'm very close. 8 (Recess taken.) 9 MR. LIGHTFOOT: My question, 10 John, this is as much for you. I think 11 we've already -- I know we've already 12 covered it, I just want to make doubly sure. 13 I asked him if this was his only claim of 14 discrimination, of race discrimination and 15 he said yes. And I -- There's no claim of 16 racial harassment, hostile environment. 17 I've not seen that anywhere or seen that 18 claim nor heard that claim, but I just want 19 to make sure. 20 MR. COTTLE: Well, we're not 21 really making it, no. 22 Q. Okay. All right. Mr. Smith, 23 you talked about one time when you asked</p>
Page 182	Page 184
<p>1 MR. COTTLE: And I'll copy it 2 right now if you don't have it. 3 MR. LIGHTFOOT: Sure. These 4 are just from the Venable firm? 5 MR. COTTLE: Yes. I think she 6 copied Mrs. Rozenzweig with all that stuff. 7 MR. LIGHTFOOT: Oh, yeah. I 8 forgot about that. 9 MR. COTTLE: I don't if 10 there's anything in there that's -- I'll be 11 glad to copy that if you want it, if you 12 don't have it. 13 MR. LIGHTFOOT: Yeah, who -- 14 John, this may be the same -- Yeah. I don't 15 need that. Thanks. 16 Q. Which employee did your lawyer 17 contact? Which former coworker of yours did 18 your employer contact -- did your lawyer 19 contact? 20 A. I think he contacted Ashley 21 Sheffield. 22 Q. Are you aware of him 23 contacting any others?</p>	<p>1 Andras for help, and you said that was only 2 one day and then after that day he was 3 unavailable. Do you remember telling me 4 that? 5 A. Correct. 6 Q. Okay. Did you ever ask Andras 7 for help again after that time? 8 A. I think I -- I think I did, 9 yes. 10 Q. And did he help you? 11 A. Actually, Andras told me that 12 Ralph told him that I was to do the job 13 myself. 14 Q. Okay. But did you ever ask 15 him again? 16 A. He have helped me after that, 17 yes. 18 Q. He still helped you after that 19 time? 20 A. Occasionally. 21 Q. Occasionally? Three to five 22 times? 23 A. Once or twice.</p>

46 (Pages 181 to 184)



## FREEDOM COURT REPORTING

Page 185	Page 187
<p>1 Q. Was there ever a time after 2 that, after he told you that Ralph had said 3 you need to do it on your own or whatever, 4 and you said he helped you occasionally, was 5 there ever a time after that time that you 6 asked him for help that he didn't help you? 7 A. Yes. 8 Q. When? 9 A. I can remember asking him for 10 his opinion on certain things and he told me 11 he was busy doing something else. 12 Q. Oh, okay. 13 A. I don't know actually the 14 dates. 15 Q. Okay. But he never refused to 16 help you again unless he was -- I mean, in 17 other words, sort of for a reason other than 18 being busy; correct? 19 A. Correct. 20 Q. To be clear on that, so even 21 after he said to you: Ralph said you kind 22 of need to figure it out on your own, even 23 after he said that to you, he still helped</p>	<p>1 A. Yes. 2 MR. LIGHTFOOT: No further 3 questions. Thank you. 4 MR. COTTLE: No questions. 5 (The deposition was concluded at 2:52 p.m., 6 May 24, 2006.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>
Page 186	Page 188
<p>1 you out occasionally. 2 There were times when you 3 asked him for help after that and he would 4 say: I can't right now, I'm too busy. But 5 he never turned you down and refused to help 6 you unless he was busy, as far as you know? 7 A. There was times that I got the 8 feeling that he didn't want to help me, so I 9 stopped asking him for help. 10 Q. And on the times where you 11 didn't ask Andras for help, you were always 12 able to ask Chad or Ralph if you needed 13 help; correct? 14 A. Correct. 15 Q. Or Brian, you were also able 16 to ask Brian for help? 17 A. I've asked Brian, yes. 18 Q. Have you told me today every 19 piece of information that you're aware of 20 that supports your claim in this lawsuit 21 that Euro-Pro discriminated against you on 22 the basis of race, in terminating your 23 employment?</p>	<p>1 REPORTER'S CERTIFICATE 2 STATE OF ALABAMA, 3 ELMORE COUNTY, 4 I, Angela Smith, Registered 5 Professional Reporter and Commissioner for 6 the State of Alabama at Large, do hereby 7 certify that the above and foregoing 8 proceeding was taken down by me by 9 stenographic means, and that the content 10 herein was produced in transcript form by 11 computer aid under my supervision, and 12 that the foregoing represents, to the best 13 of my ability, a true and correct 14 transcript of the proceedings occurring on 15 said date and at said time. 16 I further certify that I am neither 17 of kin nor of counsel to the parties to the 18 action; nor in any manner interested in the 19 result of said case. 20 21 22 Angela Smith, RPR, CRR, 23 for the State of Alabama at Large.</p>

47 (Pages 185 to 188)

# **Exhibit B**



**FREEDOM COURT REPORTING**

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 VICTOR SMITH,</p> <p>6 Plaintiff,</p> <p>7 versus 3:05-CV-1186-MEF</p> <p>8 EURO-PRO MANAGEMENT</p> <p>9 SERVICES, INC.,</p> <p>10 Defendant.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 *****</p> <p>15</p> <p>16 DEPOSITION OF RALPH HUDNALL,</p> <p>17 taken pursuant to stipulation and agreement</p> <p>18 before Jackie Parham, Certified Shorthand</p> <p>19 Reporter and Commissioner for the State of</p> <p>20 Alabama at Large, in the law offices of Bowles</p> <p>21 &amp; Cottle, 2 South Dubois Street, Tallassee,</p> <p>22 Alabama, on Wednesday, the 4th day of October,</p> <p>23 2006, commencing at approximately 10:15 a.m.</p>	<p style="text-align: right;">Page 3</p> <p>1 STIPULATION</p> <p>2 It is hereby stipulated and agreed by</p> <p>3 and between counsel representing the parties</p> <p>4 that the deposition of</p> <p>5 RALPH HUDNALL</p> <p>6 may be taken before Jackie Parham, Certified</p> <p>7 Shorthand Reporter and Commissioner for the</p> <p>8 State of Alabama at Large, without the</p> <p>9 formality of a commission, and all formality</p> <p>10 with respect to other procedural requirements</p> <p>11 is waived; that objections to questions, other</p> <p>12 than objections as to the form of the question,</p> <p>13 need not be made at this time, but may be</p> <p>14 reserved for a ruling at such time as the said</p> <p>15 deposition may be offered in evidence or used</p> <p>16 for any other purpose, by either party, as</p> <p>17 provided for by the Federal Rules of Civil</p> <p>18 Procedure.</p> <p>19 It is further stipulated and agreed by</p> <p>20 and between the parties hereto and the witness</p> <p>21 that the signature of the witness to this</p> <p>22 deposition is hereby not waived.</p> <p>23</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 APPEARING ON BEHALF OF THE PLAINTIFF:</p> <p>4 JOHN I. COTTLE, III, ESQUIRE</p> <p>5 Bowles &amp; Cottle</p> <p>6 2 South Dubois Street</p> <p>7 Tallassee, Alabama 36078</p> <p>8</p> <p>9 Also present: Victor Smith</p> <p>10</p> <p>11</p> <p>12 APPEARING ON BEHALF OF THE DEFENDANT:</p> <p>13 WARREN B. LIGHTFOOT, ESQUIRE</p> <p>14 Maynard, Cooper &amp; Gale</p> <p>15 1901 Sixth Avenue North</p> <p>16 2400 AmSouth/Harbert Plaza</p> <p>17 Birmingham, Alabama 35203</p> <p>18</p> <p>19</p> <p>20 *****</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2</p> <p>3 PX-1 (Notice of Depo) ..... 17</p> <p>4 PX-2 (Responses and Requests for .... 20</p> <p>5 Production)</p> <p>6 PX-3 (Victor Smith's Resume') ..... 41</p> <p>7 PX-4 (Position Description) ..... 41</p> <p>8 PX-5 (Employee Evaluation) ..... 41</p> <p>9 PX-6 (Evaluation of Victor Smith) .... 44</p> <p>10 PX-7 (W-2 Forms) ..... 46</p> <p>11 PX-8 (List of Topics for ..... 46</p> <p>12 Termination)</p> <p>13 PX-9 (E-Mail Messages) ..... 47</p> <p>14 PX-10 (Drawing) ..... 107</p> <p>15 PX-11 (Deductions Per Pay Period) ... 147</p> <p>16 PX-12 (Memo Regarding Interim ..... 155</p> <p>17 Personnel Policies)</p> <p>18 PX-13 (Memo Regarding Performance .. 156</p> <p>19 Review Policy)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

1 (Pages 1 to 4)

## FREEDOM COURT REPORTING

Page 9

1 A. El Paso, Texas.  
 2 **Q. What kind of courses did you take in trade**  
 3 **schools?**  
 4 A. It was for electronic engineering.  
 5 **Q. Did you get a degree?**  
 6 A. No, sir.  
 7 **Q. Do you have any other schools that you've**  
 8 **been to?**  
 9 A. No, sir.  
 10 **Q. How long have you lived at 812 McLure?**  
 11 A. I have to think. I think three years.  
 12 **Q. Where did you live before that?**  
 13 A. Immediately?  
 14 **Q. Yes.**  
 15 A. It was also in Opelika. I don't remember  
 16 the street number. It was Elizabeth  
 17 Street in Opelika.  
 18 **Q. How long did you live there?**  
 19 A. Not quite six months.  
 20 **Q. Where did you live before that?**  
 21 A. I rented an apartment downtown Auburn.  
 22 Actually, there were two apartments near  
 23 the downtown Auburn area. Gay Street, and

Page 10

1 I forget the name of the other street.  
 2 **Q. Okay. How long did you live in downtown**  
 3 **Auburn?**  
 4 A. Probably six -- No. More than that.  
 5 Probably more like nine months.  
 6 **Q. Okay. Where did you live before that?**  
 7 A. Petal, Mississippi, P-e-t-a-l.  
 8 **Q. Okay. And how long did you live in Petal,**  
 9 **Mississippi?**  
 10 A. About seven years.  
 11 **Q. And at each of those addresses we have**  
 12 **talked about, beginning in Petal,**  
 13 **Mississippi forward, was your wife with**  
 14 **you at each of those locations?**  
 15 A. Yes, except for the rental properties. We  
 16 were in the process of moving.  
 17 **Q. How long have you been married?**  
 18 **(Off-the-Record discussion)**  
 19 A. Twenty-five years.  
 20 **Q. Twenty-five years?**  
 21 A. Yes, sir.  
 22 **Q. Where is your wife from? Is she from**  
 23 **Alabama or Virginia?**

Page 11

1 A. No, sir. Originally born in New Mexico.  
 2 She -- I guess she would claim El Paso.  
 3 She moved there when she was young.  
 4 **Q. Okay. To the best of your knowledge, do**  
 5 **you have any relatives in Alabama, other**  
 6 **than your mother-in-law?**  
 7 A. No, sir.  
 8 **Q. To the best of your knowledge, does your**  
 9 **wife have any relatives in Alabama?**  
 10 A. No, sir.  
 11 **Q. You work for a company called Euro-Pro**  
 12 **Management Services; is that correct?**  
 13 A. Yes, sir, I believe so.  
 14 **Q. What do you do for them?**  
 15 A. I'm in charge of the testing, making sure  
 16 that the products are tested in a proper  
 17 manner.  
 18 **Q. Let's talk about what Euro-Pro does.**  
 19 A. Okay.  
 20 **Q. What kind of business are they in?**  
 21 A. We design and sell a variety of small home  
 22 appliances; vacuum cleaners, steam  
 23 cleaners, battery-charged sweepers,

Page 12

1 kitchen products, you know, toaster ovens,  
 2 those type things.  
 3 **Q. Do you actually manufacture those products**  
 4 **or just design them and have someone else**  
 5 **manufacture them?**  
 6 A. We design them. Someone else manufactures  
 7 them.  
 8 **Q. Okay. Now, the part of the company you**  
 9 **work in, what do you -- are you in design,**  
 10 **testing?**  
 11 A. Testing.  
 12 **Q. Can you tell me a little bit about what**  
 13 **your job description is at this time?**  
 14 A. To ensure all Euro-Pro product is tested  
 15 in accordance with whatever applicable  
 16 standards apply to that product.  
 17 **Q. Okay. And how long have you been in that**  
 18 **position?**  
 19 A. This position with Euro-Pro?  
 20 **Q. Yes.**  
 21 A. Three and a half years.  
 22 **Q. Now, how long have you worked for**  
 23 **Euro-Pro?**

3 (Pages 9 to 12)

## FREEDOM COURT REPORTING

Page 13	Page 15
<p>1 A. Three and a half years.</p> <p>2 Q. So you've been in the same position?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Who is your supervisor?</p> <p>5 A. Right now?</p> <p>6 Q. Yes.</p> <p>7 A. Chad Reese.</p> <p>8 Q. Chad Reese?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Has he always been your supervisor since</p> <p>11 you've been employed with Euro-Pro?</p> <p>12 A. No, sir.</p> <p>13 Q. Who else has supervised you?</p> <p>14 A. Terry Robertson.</p> <p>15 Q. All right. Are both Chad Reese and Terry</p> <p>16 Robertson still with Euro-Pro?</p> <p>17 A. No, sir.</p> <p>18 Q. Who is no longer with Euro-Pro?</p> <p>19 A. Mr. Robertson.</p> <p>20 Q. How long has he been gone from Euro-Pro?</p> <p>21 A. About six months.</p> <p>22 Q. And is that when your supervisor became</p> <p>23 Chad Reese?</p>	<p>1 management under Mr. Offir?</p> <p>2 A. I don't completely know.</p> <p>3 Q. Well, would -- Chad Reese, I assume, would</p> <p>4 be in that second tier?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And where would you fall, in like the</p> <p>7 third tier?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Where did you work before you came to work</p> <p>10 for Euro-Pro?</p> <p>11 A. Sunbeam Household Products.</p> <p>12 Q. Was that in Petal, Mississippi?</p> <p>13 A. Hattiesburg.</p> <p>14 Q. And what kind of things did you do for</p> <p>15 Sunbeam Products?</p> <p>16 A. At the end of my tenure with Sunbeam?</p> <p>17 Q. Yeah.</p> <p>18 A. Same thing.</p> <p>19 Q. How long did you work for Sunbeam?</p> <p>20 A. Seven years.</p> <p>21 Q. Have you ever given a deposition before?</p> <p>22 A. No, sir.</p> <p>23 Q. Have you ever sued anyone before?</p>
Page 14	Page 16
<p>1 A. I believe so. There was some -- a little</p> <p>2 bit of flux in there with the change.</p> <p>3 Mr. Robertson left. He got a replacement.</p> <p>4 The replacement had to figure out who was</p> <p>5 going to report to who. I believe Chad's</p> <p>6 been my boss ever since Terry left.</p> <p>7 Q. Has Terry Robertson been replaced by Chad</p> <p>8 Reese or by someone else?</p> <p>9 A. Someone else.</p> <p>10 Q. Okay. Who else? What's the name of the</p> <p>11 person who replaced Terry Robertson?</p> <p>12 A. Yigal Offir, Y-i-g-a-l O-f-f-i-r.</p> <p>13 Q. Okay. And Mr. Offir has been there about</p> <p>14 six months?</p> <p>15 A. About.</p> <p>16 Q. Is he the person in charge of the Auburn</p> <p>17 -- Is it Auburn or Opelika where this</p> <p>18 facility is?</p> <p>19 A. It's in Auburn.</p> <p>20 Q. Is Mr. Offir in charge of the Auburn</p> <p>21 facility?</p> <p>22 A. Yes, sir.</p> <p>23 Q. How many people are in the second tier of</p>	<p>1 A. No, sir.</p> <p>2 Q. Have you ever been sued?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Tell me about that.</p> <p>5 A. I had just moved to the Hattiesburg area.</p> <p>6 A rainy night. I was driving down the</p> <p>7 road. A guy turned in front of me. We</p> <p>8 hit. He sued me but -- Well, he sued me.</p> <p>9 Q. Okay. That was about ten years ago?</p> <p>10 A. Something like that. Yes, sir.</p> <p>11 Q. Car wreck case?</p> <p>12 A. Right.</p> <p>13 Q. That's the only time you've ever been</p> <p>14 sued?</p> <p>15 A. To my knowledge, yes, sir.</p> <p>16 Q. Okay. Have you ever been arrested or</p> <p>17 charged with a criminal offense, other</p> <p>18 than a traffic ticket?</p> <p>19 MR. LIGHTFOOT: You know what,</p> <p>20 you don't need to answer</p> <p>21 about arrested. You can</p> <p>22 answer as to convicted.</p> <p>23 A. Okay. Yes.</p>

4 (Pages 13 to 16)

# FREEDOM COURT REPORTING

<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. Tell me what that was for.</p> <p>2 A. I was involved in a DUI.</p> <p>3 Q. Anything else you've been convicted of?</p> <p>4 A. No, sir.</p> <p>5 Q. When was the DUI?</p> <p>6 A. Five years ago.</p> <p>7 Q. Was that in Mississippi or Alabama?</p> <p>8 A. Mississippi.</p> <p>9 (Plaintiff's Exhibit 1 marked</p> <p>10 for purposes of identification)</p> <p>11 Q. Mr. Hudnall, let me show you what I've</p> <p>12 marked as Plaintiff's Exhibit 1. This is</p> <p>13 a deposition notice. Have you seen that</p> <p>14 document, sir, before today?</p> <p>15 A. I believe so. Yes, sir.</p> <p>16 Q. It asks that you bring with you certain</p> <p>17 things. And it's possible that all that</p> <p>18 I've asked for here has already been</p> <p>19 produced. But if you would look on the</p> <p>20 third page of that document. "The</p> <p>21 complete personnel file of the plaintiff."</p> <p>22 Do you have that with you or have I</p> <p>23 already been given that?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Not to my knowledge. No, sir.</p> <p>2 Q. Number 5. "All correspondence between the</p> <p>3 plaintiff and defendant or any employee of</p> <p>4 the defendant." Do you have anything like</p> <p>5 that that you've not already produced?</p> <p>6 A. No, sir.</p> <p>7 Q. "The personnel file of Ashley Sheffield."</p> <p>8 That was produced with some things</p> <p>9 redacted and omitted. But you don't have</p> <p>10 anything else on that today?</p> <p>11 A. No, sir.</p> <p>12 Q. The same with David Richards. Any other</p> <p>13 documents from that file did you bring</p> <p>14 with you?</p> <p>15 A. No, sir.</p> <p>16 Q. I asked for the personnel file of the</p> <p>17 person hired to replace the plaintiff. Do</p> <p>18 you have -- And I understand -- Actually,</p> <p>19 you contend that no one was hired to</p> <p>20 replace the plaintiff.</p> <p>21 A. That's correct.</p> <p>22 Q. But there was an individual hired around</p> <p>23 the time the plaintiff was terminated by</p>
<p style="text-align: right;">Page 18</p> <p>1 A. I believe you've been provided that.</p> <p>2 Q. Okay. "Documents reflecting any</p> <p>3 complaints made by any supervisors or</p> <p>4 co-employees of the plaintiff." Is there</p> <p>5 anything you have in response to that that</p> <p>6 you have not already given me?</p> <p>7 A. No, sir. Not that I've not already given</p> <p>8 you.</p> <p>9 Q. Number 3. "Copies of documents reflecting</p> <p>10 or referencing any exit interview</p> <p>11 conducted at or near the time the</p> <p>12 plaintiff was terminated." I have one</p> <p>13 sheet of notes about that.</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is there anything else you know of?</p> <p>16 A. Not that I know.</p> <p>17 Q. Number 4. "All employee evaluations of</p> <p>18 the plaintiff." And I have one. It's a</p> <p>19 document several pages long. But it</p> <p>20 appears to be all the same evaluation.</p> <p>21 A. Okay.</p> <p>22 Q. Are there any others that you know of that</p> <p>23 I don't have?</p>	<p style="text-align: right;">Page 20</p> <p>1 the name of Mr. Garrison, I think. Did I</p> <p>2 say that right?</p> <p>3 A. Garrison. Yes, sir.</p> <p>4 Q. What is his --</p> <p>5 A. That's the correct pronunciation, I</p> <p>6 believe.</p> <p>7 Q. What's his first name?</p> <p>8 A. Jeffrey.</p> <p>9 Q. Did you happen to bring his personnel file</p> <p>10 with you?</p> <p>11 A. No, sir. He was not hired to replace</p> <p>12 anybody. He was hired for a new position.</p> <p>13 (Plaintiff's Exhibit 2 marked</p> <p>14 for purposes of identification)</p> <p>15 Q. Let me show you what I've marked here as</p> <p>16 Plaintiff's Exhibit 2. And this is</p> <p>17 Defendant's Responses to Plaintiff's First</p> <p>18 Set of Interrogatories. And I believe</p> <p>19 you've signed those. Would you just look</p> <p>20 those over and tell me if you have read</p> <p>21 that over and if that's your signature on</p> <p>22 the last page?</p> <p>23 A. That's my signature. Yes, sir.</p>

5 (Pages 17 to 20)

367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660



## FREEDOM COURT REPORTING

Page 25	Page 27
<p>1 country?</p> <p>2 A. Around the U.S.</p> <p>3 Q. Yes.</p> <p>4 A. I know of two.</p> <p>5 Q. All right. Where are they?</p> <p>6 A. Boston and Alabama.</p> <p>7 Q. Okay. And the one in Alabama is the one</p> <p>8 in Auburn?</p> <p>9 A. Correct.</p> <p>10 Q. That's the only one in Alabama?</p> <p>11 A. Yes, sir, to my knowledge.</p> <p>12 Q. And then there's one in Boston?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Does it do essentially the same thing that</p> <p>15 the Auburn plant does?</p> <p>16 A. The marketing and sales group, as well as</p> <p>17 the president, those people stay in</p> <p>18 Boston.</p> <p>19 Q. Okay. Do they do design and testing of</p> <p>20 products?</p> <p>21 A. No, sir.</p> <p>22 Q. That's just the management; that's the</p> <p>23 corporate headquarters, I guess?</p>	<p>1 Q. Okay. How many people are employed in the</p> <p>2 Auburn facility?</p> <p>3 A. Today?</p> <p>4 Q. Yes.</p> <p>5 A. I'm guessing twenty.</p> <p>6 Q. At the time Victor Smith was hired, which</p> <p>7 was in December of '03, about how many</p> <p>8 people worked there at that time?</p> <p>9 A. When he first came to us?</p> <p>10 Q. Yes.</p> <p>11 A. When he first came to us. Okay. I think</p> <p>12 seven, maybe eight.</p> <p>13 Q. At the time Victor Smith was terminated,</p> <p>14 which was in December of '04,</p> <p>15 approximately how many people worked at</p> <p>16 the Auburn plant?</p> <p>17 A. I think maybe fifteen.</p> <p>18 Q. Could you tell me how many tiers or levels</p> <p>19 of authority there are at the plant? I</p> <p>20 mean, you've got one person who's the</p> <p>21 manager of that facility.</p> <p>22 A. Right.</p> <p>23 Q. How many different tiers or levels of</p>
Page 26	Page 28
<p>1 A. Correct.</p> <p>2 Q. So all of the design and testing of the</p> <p>3 products is done at the Auburn facility;</p> <p>4 is that correct?</p> <p>5 A. No.</p> <p>6 Q. Okay. Where else would there be design</p> <p>7 and testing done?</p> <p>8 A. I believe -- Well, I know there's some</p> <p>9 done in Montreal. And that's all --</p> <p>10 that's all the company owns is down in</p> <p>11 Montreal.</p> <p>12 Q. Okay. I think I got confused. You</p> <p>13 limited your answer to the U.S., which I</p> <p>14 think is what I asked you.</p> <p>15 A. Oh, yes, sir.</p> <p>16 Q. So you do have a facility in Montreal?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is there anywhere else in the world that</p> <p>19 you know of that Euro-Pro has a facility</p> <p>20 other than Boston, Montreal and Auburn?</p> <p>21 A. We have offices in China.</p> <p>22 Q. Okay.</p> <p>23 A. Hong Kong and China.</p>	<p>1 authority are there below the plant</p> <p>2 manager?</p> <p>3 A. Now?</p> <p>4 Q. Yes.</p> <p>5 A. At our facility itself?</p> <p>6 Q. Yes.</p> <p>7 A. I think two.</p> <p>8 Q. Is there a position called lab technician?</p> <p>9 A. Yes.</p> <p>10 Q. Where does that fall in the hierarchy?</p> <p>11 A. It would be the second level.</p> <p>12 Q. The lowest level?</p> <p>13 A. The technician level would be the lowest</p> <p>14 level. But within that level are various</p> <p>15 levels of technicians.</p> <p>16 Q. Okay. How many levels of lab tech are</p> <p>17 there?</p> <p>18 A. We allow for three.</p> <p>19 Q. Okay. What are the various jobs -- I</p> <p>20 mean, we're only talking fifteen to twenty</p> <p>21 people. What are the various job</p> <p>22 descriptions -- not job descriptions --</p> <p>23 but job titles of the people who work in</p>

7 (Pages 25 to 28)



## FREEDOM COURT REPORTING

Page 33	Page 35
<p>1 A. I don't know specifically. It would have 2 been sometime in '02. 3 <b>Q. Were you there when it opened?</b> 4 A. No, sir. Let me -- 5 <b>Q. Go ahead.</b> 6 A. No, sir. The organization was started in 7 Auburn when I came on board. 8 <b>Q. Okay. Were you on board with the</b> 9 <b>organization when Victor Smith was hired?</b> 10 A. Yes, sir. 11 <b>Q. Do you remember when he was hired?</b> 12 A. I don't remember specifically. He would 13 have come -- he came to us as a temp. It 14 would have been sometime -- 15 <b>Q. Does December of '03 sound correct?</b> 16 A. That's when we hired him full-time. 17 That's when we hired him permanently. 18 Yes, sir. 19 <b>Q. He came there first as a temp?</b> 20 A. Yes, sir. 21 <b>Q. And that was through some employment</b> 22 <b>agency?</b> 23 A. That's correct.</p>	<p>1 <b>December of '03, did his job duties change</b> 2 <b>any at that time?</b> 3 A. Yes, sir. 4 <b>Q. And how did they change?</b> 5 A. We asked him to go to second shift. We 6 had a lot of work to get done. We needed 7 to run two shifts. In order to continue 8 to run a second shift, we needed a 9 permanent person on board at the second 10 shift location. It was either going to be 11 me or somebody else. We thought of hiring 12 Victor, once we saw his resume', his skill 13 levels. We thought this would be a good 14 pick from the group we had to run our 15 second shift. So we offered him a second 16 shift job. 17 He was responsible for scheduling the 18 work that had to be done for second and 19 first shift. He was responsible to make 20 sure that we had plenty of -- plenty of 21 things to work with, sand, dirt -- you've 22 got to put something down to vacuum it up 23 -- plenty of that stuff to work with so we</p>
Page 34	Page 36
<p>1 <b>Q. Is there one that Euro-Pro regularly uses?</b> 2 A. It would either have been A-1 or 3 Employment Resources. Those are the two 4 we typically use. 5 <b>Q. Is that typically how Euro-Pro hires</b> 6 <b>people?</b> 7 A. Well, for the Auburn facility, that's how 8 we found our local help. 9 <b>Q. What position was Victor Smith hired at?</b> 10 A. I forget the exact title. He would have 11 been hired as a lead tech -- some sort of 12 a lead tech for the Cleanability Group 13 when he was permanently hired. 14 <b>Q. Cleanability is dealing in vacuum</b> 15 <b>cleaners?</b> 16 A. Vacuum cleaner performance. 17 <b>Q. And that would have been when he came to</b> 18 <b>you as a temp?</b> 19 A. No, sir. As a temp he was -- I'm sorry. 20 As a temp he came in working the vacuum 21 cleaner performance as a tech -- lab tech 22 for vacuum cleaner performance. 23 <b>Q. When he was hired as a regular employee in</b></p>	<p>1 could continue to do the testing that 2 needed to be done. 3 <b>Q. Well, do I understand that when he was</b> 4 <b>hired in December of '03, that he was</b> 5 <b>placed in charge of the second shift?</b> 6 A. He was responsible to make sure the second 7 shift was getting the work done that 8 needed to be done, as well as scheduling 9 the work for the next shift the next day. 10 <b>Q. So did he have any supervisory authority</b> 11 <b>in that position?</b> 12 A. Some. 13 <b>Q. Can you explain that?</b> 14 A. He was not authorized to give people time 15 off or not authorized to make any kind of 16 changes as far as schedule goes, things 17 like that. But he was looked at as the 18 lead for the entire group. In that lead 19 role you're looked at -- well, you're the 20 leader of the group. 21 <b>Q. How many people worked on that second</b> 22 <b>shift?</b> 23 A. On the second shift?</p>

## FREEDOM COURT REPORTING

Page 45

1 certainly talk about what is needed and  
 2 how he can improve. These are types of  
 3 things you talk about in an evaluation  
 4 process.  
 5 **Q. Is that an evaluation you did?**  
 6 A. Yes, sir.  
 7 **Q. Is that a part of the evaluation reflected**  
 8 **by Plaintiff's Exhibit 5?**  
 9 A. No, sir, I wouldn't think so. No, sir.  
 10 **Q. Okay. Those were done at different times?**  
 11 A. Correct.  
 12 **Q. All right. Which one was done first?**  
 13 A. This shorter one.  
 14 **Q. Plaintiff's Exhibit 6?**  
 15 A. Yes, sir.  
 16 **Q. And what's the date of that?**  
 17 A. May 5th of '04.  
 18 **Q. And you did that?**  
 19 A. Yes, sir.  
 20 **Q. And then the next evaluation as shown by**  
 21 **Plaintiff's Exhibit 5, what's the date of**  
 22 **that?**  
 23 A. August 27th of '04.

Page 46

1 **Q. And you did that one as well?**  
 2 A. Yes, sir.  
 3 **Q. All right.**  
 4 (Plaintiff's Exhibit 7 marked  
 5 for purposes of identification)  
 6 **Q. I've marked as Plaintiff's Exhibit 7 a**  
 7 **couple of W-2 forms showing Victor's wages**  
 8 **with Euro-Pro for 2003 and 2004. Is that**  
 9 **what those documents appear to be to you?**  
 10 A. Yes, sir. I believe so.  
 11 **Q. Would they be a part of his personnel**  
 12 **file?**  
 13 A. I don't know.  
 14 (Plaintiff's Exhibit 8 marked  
 15 for purposes of identification)  
 16 **Q. Okay. Let me show you Plaintiff's Exhibit**  
 17 **8. Do you know what that is?**  
 18 A. Yes, sir.  
 19 **Q. What is that?**  
 20 A. I believe it's the -- it's the list of  
 21 things Mr. Robertson was going to discuss  
 22 with Victor on the day that Victor was  
 23 terminated.

Page 47

1 **Q. Do you know who prepared that document?**  
 2 A. Not specifically, no, sir.  
 3 **Q. Do you know if it was prepared before or**  
 4 **after Mr. Robertson had his discussion**  
 5 **with Victor in which he terminated him?**  
 6 A. I don't know.  
 7 **Q. Have you ever seen that document before?**  
 8 A. Yes, sir.  
 9 **Q. Is that document a part of Victor's**  
 10 **personnel file?**  
 11 A. I'm not sure. It seems like it should be,  
 12 but I'm not sure.  
 13 (Plaintiff's Exhibit 9 marked  
 14 for purposes of identification)  
 15 **Q. Plaintiff's Exhibit 9, this is some e-mail**  
 16 **messages back and forth between Victor and**  
 17 **Chad, I guess Chad Reese; is that correct?**  
 18 A. Yes, sir.  
 19 **Q. Is that something you have seen before?**  
 20 A. Yes, sir.  
 21 **Q. Is that a part of Victor's personnel file?**  
 22 A. I don't know.  
 23 **Q. Are there any other documents that should**

Page 48

1 **be in his personnel file that you know of?**  
 2 A. I don't know.  
 3 **Q. Do you know if there are files where**  
 4 **employee records are kept other than the**  
 5 **personnel file?**  
 6 A. I don't know, sir.  
 7 **Q. If an employee violates a company policy**  
 8 **and some kind of disciplinary action is**  
 9 **going to be taken, how is that handled?**  
 10 A. Each engineer -- I take that back. Each  
 11 project manager has their own group of  
 12 people. They handle their own issues  
 13 themselves.  
 14 **Q. Is there a process whereby an employee may**  
 15 **be formally reprimanded or suspended**  
 16 **without pay, suspended with pay, that sort**  
 17 **of thing?**  
 18 A. I don't know.  
 19 **Q. Have you ever known of an employee to be**  
 20 **reprimanded where a notice of that**  
 21 **reprimand was placed in the personnel**  
 22 **file?**  
 23 A. While at Euro-Pro?

12 (Pages 45 to 48)

## FREEDOM COURT REPORTING

Page 69	Page 71
<p>1 soils, we'll say, and then you vacuum them 2 up. I'm sure there are other things to go 3 along with that. But, basically, he was 4 to make sure that the vacuum performance 5 group could operate, all the lab techs and 6 temporaries under him could perform their 7 functions.</p> <p>8 <b>Q. Okay. All right. So that's what he was 9 doing, was Cleanability?</b></p> <p>10 <b>A. Correct.</b></p> <p>11 <b>Q. Now, he was taken off that and placed on 12 another project, correct?</b></p> <p>13 <b>A. Right. Like I said, the reason for the 14 second shift was, we had a huge amount of 15 work to get done. It just made more sense 16 to run two shifts instead of one. It 17 worked out better for some of the 18 employees, some of the guys that were 19 working there, because they worked better 20 on the night shift than during the 21 daytime.</b></p> <p>22 We started having trouble keeping the 23 second shift full, plus the workload</p>	<p>1 the end of the Life test, if the unit does 2 fail, to make sure that it fails in a safe 3 manner so that it doesn't literally blow 4 up while you're trying to vacuum your 5 house and catch your house on fire, those 6 types of things, as well as evaluating the 7 product during the design process to see 8 if there are things we can make to make it 9 an even better product. Various things 10 come out of that, comes out of that Life 11 testing that most companies do to 12 determine. Are you making a safe product? 13 Is it reliable? Will the consumer get a 14 good value for it? Can we continue to 15 stay in business, basically?</p> <p>16 <b>Q. So when you say Life testing, the term 17 "Life" refers to the life of the product?</b></p> <p>18 <b>A. Correct.</b></p> <p>19 <b>Q. All right. What job was Victor given when 20 he moved into Life testing?</b></p> <p>21 <b>A. When he moved into it, he was responsible 22 for the entire maintenance of everything 23 on tests. I'm not sure if we even had</b></p>
Page 70	Page 72
<p>1 required on the night shift was not 2 necessary anymore. The workload wasn't 3 there anymore. So the night shift really 4 wasn't necessary. We brought all the 5 people back to the daytime shift. And 6 then we offered Victor the position to 7 move into the Life test area, which really 8 is where I got my start.</p> <p>9 <b>Q. What is the Life test area?</b></p> <p>10 <b>A. As I said, Euro-Pro makes a variety of 11 products, from typical vacuum cleaners, 12 portable steam cleaners, clothes irons, 13 hand mixers, toaster ovens, a variety of 14 stuff. Part of that process -- Any 15 responsible manufacturer will conduct what 16 we call Life testing. We are trying to -- 17 We do two things -- well, several things 18 in this business. We are trying to 19 evaluate how well the product works over 20 the course of its lifetime, making sure 21 that the consumer gets a fair value for 22 their money when they buy the product, as 23 well as -- At the end of the process, at</b></p>	<p>1 anything on tests at that time, other than 2 a few things I had been able to cobble 3 together. So his main responsibility was 4 to start building the fixtures to allow us 5 to put units on test so that they could 6 run in an automated fashion, as opposed to 7 having -- Say, for a clothes iron, instead 8 of having to have somebody there to push 9 the iron back and forth and turn it on and 10 fill it up with water and do all the 11 things you need to do for a clothes iron, 12 it would have been Victor's 13 responsibility. And I'm using clothes 14 iron. But now that I think about it, we 15 didn't install irons until later.</p> <p>16 For a deep fryer, for example, 17 something he did have involvement with, he 18 would put the oil in. He would set up a 19 system to turn that deep fryer on and off 20 per our own specifications and record the 21 number of times the unit was turned on; to 22 make sure that when it came on, it 23 actually was working and heating oil.</p>

18 (Pages 69 to 72)

## FREEDOM COURT REPORTING

Page 81

1 A. Yes, sir.

2 **Q. Now we move to "Teamwork and Cooperation,"**

3 **which is the next area. And there**

4 **Victor's performance met the standards in**

5 **all important aspects; good contributor.**

6 **That was your opinion at that time?**

7 A. Yes, sir.

8 **Q. "Interpersonal and Communication Skills."**

9 **Again, you rated his performance as**

10 **meeting the standards in all important**

11 **aspects, correct?**

12 A. Yes, sir.

13 **Q. And then "Initiative/Commitment." In that**

14 **area you rated his performance as meeting**

15 **the standards in all important aspects;**

16 **good contributor?**

17 A. Yes, sir. That he met the minimum

18 standards.

19 **Q. Okay. Then we go to, I guess, some more**

20 **particular observations. And you indicate**

21 **that his main strength is building test**

22 **fixtures. So he had been working on this**

23 **steam cleaning fixture; is that right?**

Page 82

1 A. He had had some work on the steam cleaning

2 fixture. This was more to the previous

3 fixtures he had built. He had probably

4 built five fixtures before we gave him a

5 steam cleaner, and he did a pretty good

6 job with those five, which made us think

7 he -- Those were very simple fixtures.

8 The steam cleaner was a -- was a step up

9 in challenge. But he had done such a good

10 job on the first ones, we thought taking

11 it to the next level was an obvious

12 choice.

13 **Q. And it indicates that he's not afraid to**

14 **ask for assistance when needed?**

15 A. That's true.

16 **Q. He's dependable?**

17 A. Yeah.

18 **Q. Very exacting in accomplishing his**

19 **assigned tasks?**

20 A. Yes. At that time he was doing fine.

21 **Q. "Areas that need improvement." You note**

22 **that he needs to accept the entire role**

23 **for which he was hired, and that the role**

Page 83

1 **is constantly changing and growing. Is**

2 **there anything in particular that caused**

3 **you to make that observation?**

4 A. Several things. The room he was working

5 in was a large area and it's his area. We

6 tried to make it very clear it was his

7 responsibility to make sure that the area

8 was kept neat and tidy. It didn't

9 necessarily mean he had to go and sweep up

10 everything that was put on the floor. It

11 was okay with me if he went and got

12 somebody else and said, "Hey, you made

13 this mess, so help me clean it up." But

14 at the same time it's also important to

15 point out that Mr. Robertson, whose title,

16 I believe, was executive vice-president,

17 was not afraid to pick up a broom and

18 sweep himself. So if he's setting that

19 example, then it's pretty obvious that

20 everybody in the group needs to be

21 cleaning up. And Victor seemed to have a

22 specific problem with that specific part

23 of the duties, just keeping the area neat

Page 84

1 and clean. The other sentence in there

2 is, "These changes are expected to be

3 accomplished without additional

4 compensation."

5 Victor had come to me a couple of

6 times talking about he wasn't making

7 enough money. I told him at the time,

8 "You don't get paid for the job you're

9 doing now. You work for your raise next

10 year." That's just my philosophy. The

11 work I do is reflected in my raise next

12 year. If I don't do very good this year,

13 I don't deserve much next year. But I

14 don't go and complain about what I'm doing

15 now based on my current salary.

16 **Q. Okay. Then we go to number 2 under "Areas**

17 **that need improvement." And it says there**

18 **is a concern with accomplishing routine**

19 **tasks. "An example is cleaning his work**

20 **area." So we're back to keeping the work**

21 **area clean here?**

22 A. That's a bit of it. It also goes back,

23 and some of this, again, is back into the



## FREEDOM COURT REPORTING

Page 85

1 first issue. When a product is on test,  
 2 is it actually working or is the PLC, the  
 3 computer that controls it, is it just  
 4 turning on and it looks like the product  
 5 is working? To actually go and touch the  
 6 thing, is it getting hot or getting cold?  
 7 We even provided him -- I gave him a  
 8 little, small, hand-held infrared  
 9 thermometer that he would just have to  
 10 shoot and point at the side of the device  
 11 to use to see if it was getting warm.  
 12 Just some way to record that we know the  
 13 thing is getting hot the way it's supposed  
 14 to. And these are starting to creep in  
 15 that he's not doing these types of things.  
 16 **Q. "Needs to improve Initiative. Take it**  
 17 **upon himself to correct problems seen,**  
 18 **either fixtures or products on test.**  
 19 **Don't just report that a product has quit**  
 20 **working. Look to see if he can find the**  
 21 **trouble." And that's basically what you**  
 22 **just related to me?**  
 23 **A. More of that. Again, and the last**

Page 86

1 sentence, I think, is key -- last two  
 2 sentences, rather. "In time, he," meaning  
 3 Victor, "will become the main analyst to  
 4 determine the Life test failures." We  
 5 needed a guy in that lab that if that  
 6 toaster oven stops working, he can then  
 7 take that toaster oven apart and then  
 8 either go to the technician or the  
 9 engineer and show them, well, this thing  
 10 failed right here. It wasn't expected for  
 11 him to do it necessarily at this day. But  
 12 if he's not even opening the units to  
 13 start looking at them, then he'll never  
 14 get to the point to where he can identify  
 15 problems. And at this point he wasn't  
 16 even wanting to open the unit. He was  
 17 just going to tell somebody that that  
 18 thing failed.  
 19 **Q. On the next page of this evaluation, I'm**  
 20 **just looking at under "Comments," the**  
 21 **third line down at the end of that line,**  
 22 **it says, "He is now in the midst of**  
 23 **developing an automated fixture for steam**

Page 87

1 **cleaners and will implement a preventive**  
 2 **maintenance system for all Life test**  
 3 **fixtures." So at this point in time, when**  
 4 **this report was done, he was working on**  
 5 **the steam cleaner testing fixture?**  
 6 **A. Yes, sir.**  
 7 **Q. And his overall performance, it looks like**  
 8 **a 3.5. Is that like 3.5 out of 5?**  
 9 **A. Out of 5. Which, by the way, was the**  
 10 **lowest score I gave anybody.**  
 11 **Q. But it is -- You do indicate he's meeting**  
 12 **standards in all important aspects and is**  
 13 **a good contributor?**  
 14 **A. I do say that. Rightly or wrongly, the**  
 15 **way I was taught to give evaluations is,**  
 16 **you never go too high and you never go too**  
 17 **low. You never go too high because**  
 18 **nobody's perfect. You never go too low**  
 19 **because then you kill morale. I did make**  
 20 **it clear that this was -- in my opinion,**  
 21 **this was a low score; that things needed**  
 22 **to start picking up. I didn't want to --**  
 23 **again, I didn't want to grade him too low,**

Page 88

1 because if you have a potential morale  
 2 problem and then you grade them very low,  
 3 then that morale problem just gets worse.  
 4 **Q. Let me ask you to look at Plaintiff's**  
 5 **Exhibit 2, which are the interrogatories.**  
 6 **A. Okay.**  
 7 **Q. And if you'd look at number 7. And what**  
 8 **this question is asking, just to review,**  
 9 **is to list the occasions in which the**  
 10 **plaintiff was reprimanded, written up or**  
 11 **counseled for anything related to his**  
 12 **employment. And there are about, I don't**  
 13 **know, seven or eight -- I guess there are**  
 14 **eleven items. The first one involves a**  
 15 **confrontation with Sam Hickman. Do you**  
 16 **know when that happened?**  
 17 **A. Not specifically. It was while Victor --**  
 18 **I believe it was while Victor was running**  
 19 **the second shift. See, there was an**  
 20 **overlap. If I remember right, the first**  
 21 **shift would start at 6 and work till 2:30,**  
 22 **and then Victor would come on at 2 and**  
 23 **work till 10 or 10:30, something like**

22 (Pages 85 to 88)



## FREEDOM COURT REPORTING

Page 89

1 that. So there was a half-hour overlap  
 2 where Victor could then go over what was  
 3 done in the morning so he could continue  
 4 on for the second shift, and then he could  
 5 give his status for the group for the next  
 6 morning.  
 7 **Q. Okay.**  
 8 **A. So I'm -- I know it happened during that 2**  
 9 **or 2:30 time frame. I'm just not exactly**  
 10 **sure what day it happened.**  
 11 **Q. This happened several months before the**  
 12 **last evaluation, didn't it?**  
 13 **A. Oh, yes, sir.**  
 14 **Q. And once you counseled him about that, did**  
 15 **you have any more problem with him**  
 16 **confronting other workers in an aggressive**  
 17 **or disrespectful way?**  
 18 **A. I didn't have any specific -- Nobody would**  
 19 **come up with any -- come to me with any**  
 20 **specific instances. There still seemed to**  
 21 **be a general feeling within the group that**  
 22 **he was a little bit overbearing, and**  
 23 **that's the reason for some of the comments**

Page 90

1 in the earlier -- in the May discussion.  
 2 **Q. Number 2 just sort of reiterates the first**  
 3 **point about the confrontation with Sam**  
 4 **Hickman?**  
 5 **A. Yes, sir.**  
 6 **Q. What was Sam Hickman's job?**  
 7 **A. He was one of the temporary test**  
 8 **technicians in the Cleanability Group.**  
 9 **Q. Now, number 3 talks about the plaintiff,**  
 10 **Victor Smith, being counseled; that he**  
 11 **needed to quit wasting time on non-work**  
 12 **matters, like the telephone and the**  
 13 **Internet. Do you recall him being**  
 14 **personally singled out and counseled for**  
 15 **excessive use of the telephone and the**  
 16 **Internet?**  
 17 **A. I know there was an instance where he was**  
 18 **counseled about use of the telephone. I**  
 19 **don't know if Mr. Robertson singled him**  
 20 **out additionally or not.**  
 21 **Q. Weren't all the employees warned about**  
 22 **excessive use of Internet and telephone?**  
 23 **A. That's true.**

Page 91

1 **Q. That's just a general warning that was**  
 2 **issued?**  
 3 **A. Yes, sir.**  
 4 **Q. To everyone?**  
 5 **A. Yes, sir.**  
 6 **Q. Let's go to number 4. It says that you**  
 7 **and Chad Reese, after learning that the**  
 8 **plaintiff had called a female employee**  
 9 **from work during his working hours not**  
 10 **related to work, which was against company**  
 11 **policy and which made her uncomfortable,**  
 12 **and then you counseled the plaintiff about**  
 13 **that. Who was the employee that he**  
 14 **called?**  
 15 **A. Ashley Sheffield.**  
 16 **Q. And what policy did that violate?**  
 17 **A. When she reported it to me, she said she**  
 18 **got the call about 9 or 9:30, which,**  
 19 **again, his working day ended at 10 or**  
 20 **10:30. Again, I forget which. It should**  
 21 **-- It would not have been -- There were no**  
 22 **scheduled breaks. But it was -- it would**  
 23 **be highly unusual and we would discourage**

Page 92

1 taking a break at 9:30 if you leave at 10  
 2 -- take a fifteen-minute break from 9:30  
 3 to 9:45 and then come back to work for  
 4 fifteen minutes. The breaks generally  
 5 were supposed to be, you'd have your  
 6 lunchtime at the midpoint of your day,  
 7 midpoint of whatever your day was, and  
 8 then the breaks generally are equal  
 9 distance apart from those two times.  
 10 Ashley knew the times that they were  
 11 working, 2 to 10, I believe it was, maybe  
 12 10:30. We had just been counseled. As a  
 13 matter of fact, Ashley had just been  
 14 talked with about the use of telephone and  
 15 Internet. And the whole group had been  
 16 counseled about that. So she felt it was  
 17 incorrect for somebody who was on the  
 18 night shift to be calling her while they  
 19 were supposed to be working.  
 20 **Q. Okay. Now, if I understand this, you**  
 21 **don't know what break schedule he was on?**  
 22 **A. There was no hard-and-fast break schedule**  
 23 **due to the nature of the job. I didn't**

23 (Pages 89 to 92)

## FREEDOM COURT REPORTING

Page 101	Page 103
<p>1 mentioned in that same sentence, then  2 there's -- there's easily a dozen, if not  3 more. They may not have all said, you've  4 got to bring the job to a higher level.  5 It may have been something like, we need a  6 maintenance system for these test fixtures  7 so we know how often they need to get --  8 how often they need service or the last  9 time they had service. We've talked about  10 this before, about the maintenance of --  11 just the maintenance of the entire room,  12 whether the product is working properly or  13 not. As I said, verifying the operation  14 of all testing fixtures and buying the  15 correct and appropriate number of parts  16 for the steam cleaner he was trying to  17 build. There were several times when,  18 okay, we bought the wrong part. Not only  19 did we buy one wrong, we bought four, five  20 or six of the wrong thing and then we've  21 got to send them all back and get new  22 ones.  23 The work of the steam cleaner, as it</p>	<p>1 tech; is that right?  2 A. Yes, sir.  3 Q. Did she work in close proximity to Victor  4 at the facility or --  5 A. Their assigned spaces were a little apart.  6 But, I mean, we all worked in close  7 proximity.  8 Q. Did she ever complain in any way about  9 Victor, other than that one time?  10 A. Not that I recall.  11 Q. And she never specifically said anything  12 to indicate that what Victor said to her  13 was in the nature of sexual harassment?  14 A. That's correct.  15 Q. That's an assumption that was made based  16 on things other than what she directly  17 told you?  18 MR. LIGHTFOOT: Objection. Go  19 ahead. You can answer.  20 A. That's correct. That's correct.  21 Q. When Victor Smith was moved to Life  22 testing, his supervisor did not change?  23 A. Correct.</p>
Page 102	Page 104
<p>1 says, it's a steam cleaner. So the water  2 is going to get to a boiling point. And  3 there were times we buy parts that weren't  4 rated for -- to handle hot water. So  5 you've got to send those back and get new  6 parts in. Adding all that together, at  7 least a dozen.  8 Q. Okay. But none of that was in writing,  9 except to the extent it's reflected in the  10 two written evaluations that we've gone  11 over?  12 A. Correct.  13 Q. Okay. Number 11. You counseled the  14 plaintiff on at least one occasion, that  15 the building of a steam cleaner testing  16 station was progressing too slowly and  17 costing too much money?  18 A. Right.  19 Q. That was the project Victor was working on  20 at the time he was terminated, correct?  21 A. That's correct.  22 Q. Let me ask you about -- Go back to Ashley  23 Sheffield for a moment. She was a lab</p>	<p>1 Q. That was still you?  2 A. Right.  3 Q. The group of people that he could have  4 access to for assistance maybe in  5 designing or building the things he was  6 supposed to design and build, did they  7 change?  8 A. Well, he had no responsibility. So, yes,  9 they did. I mean, yeah. He was no longer  10 over Vacuum performance, which I was  11 pretty much -- if there was an authority,  12 it was me. He came into another realm,  13 which I was still pretty much the  14 authority on, but we had other people who  15 had experience that could help. So in  16 that manner it did change.  17 Q. Okay. Who did he have he could go to for  18 help?  19 A. Of course, myself, Chad Reese.  20 Q. Is Chad Reese an engineer?  21 A. Yes, sir. Mechanical. We like to funnel  22 the resources through one or two other  23 individuals, Brian McGhee and Andres</p>

26 (Pages 101 to 104)

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 113</p> <p>1 <b>constructing this machine?</b></p> <p>2 A. A lot of it's detailed. The first thing</p> <p>3 he missed was the expected completion</p> <p>4 date. Several instances of buying the</p> <p>5 wrong parts. As I stated earlier, some</p> <p>6 things we -- some assumptions we made --</p> <p>7 The product is generating steam. So any</p> <p>8 component that's going to -- that that</p> <p>9 steam is going to touch needs to be rated</p> <p>10 for a high-temperature component, as well</p> <p>11 as a fairly high-pressure device.</p> <p>12 There were times when he would buy</p> <p>13 components that were neither high-pressure</p> <p>14 nor high-temperature. So there's an</p> <p>15 expenditure there that didn't need to be</p> <p>16 done. We get the parts in. They don't</p> <p>17 work. So we have to install them. They</p> <p>18 don't work. We've got to take those off.</p> <p>19 We've got to identify new components,</p> <p>20 order those and install those. That</p> <p>21 happened several different times in the</p> <p>22 process.</p> <p>23 I'm sure there's others that will</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Of '04?</p> <p>2 A. Of '04. Yes, sir.</p> <p>3 Q. And who made the decision to terminate his</p> <p>4 employment?</p> <p>5 A. Terry Robertson.</p> <p>6 Q. Were there discussions that you had with</p> <p>7 Terry Robertson before that decision was</p> <p>8 made?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And when did you first start talking with</p> <p>11 Terry Robertson about anything to do with</p> <p>12 the possibility of terminating Victor</p> <p>13 Smith?</p> <p>14 A. Well, I never approached Terry with the</p> <p>15 idea of a termination. I approached Terry</p> <p>16 which some specific instances of some</p> <p>17 concern that I knew he would be -- would</p> <p>18 want to know about. That was probably --</p> <p>19 I don't know the dates. Late in November,</p> <p>20 in and around the Thanksgiving time frame.</p> <p>21 Q. Okay. And when you first approached him,</p> <p>22 what was the issue you discussed with him?</p> <p>23 A. Victor had taken vacation. And I felt I</p>
<p style="text-align: right;">Page 114</p> <p>1 come to me. The main thing to me was that</p> <p>2 it wasn't complete on time. We were</p> <p>3 almost wasting money because we were</p> <p>4 buying the wrong parts that obviously</p> <p>5 wouldn't go into this fixture. And then</p> <p>6 after we started to bring it to his</p> <p>7 attention that it was taking too much time</p> <p>8 and costing too much money, it seemed like</p> <p>9 the project just drug on longer and</p> <p>10 longer. As I said, I'm sure there's other</p> <p>11 things that I can add to it. Those are</p> <p>12 the main points in my mind right now as to</p> <p>13 what was wrong with the steam fixture.</p> <p>14 (Lunch recess)</p> <p>15 Q. Mr. Hudnall, I want to ask you now -- I</p> <p>16 want to move to the date that Victor Smith</p> <p>17 was terminated --</p> <p>18 A. Yes, sir.</p> <p>19 Q. -- as an employee of Euro-Pro. When did</p> <p>20 that happen?</p> <p>21 A. I believe it was something like December</p> <p>22 3rd. I think that's when it was.</p> <p>23 Something in that neighborhood.</p>	<p style="text-align: right;">Page 116</p> <p>1 had made it very evident that I would need</p> <p>2 to be able to operate the steam cleaner</p> <p>3 fixtures properly while Victor was on</p> <p>4 vacation. I actually wanted to take that</p> <p>5 opportunity to go through and kind of</p> <p>6 critique his work. I don't like to do</p> <p>7 that in front of the employee because it</p> <p>8 can sometimes become belittling, and that</p> <p>9 was not my intention to belittle anybody.</p> <p>10 I just wanted to take a chance and look</p> <p>11 through the whole thing myself, knowing</p> <p>12 it's a fairly complex fixture, to see how</p> <p>13 well it was operating and see if there was</p> <p>14 any things I could help Victor -- either</p> <p>15 help the machine get better or help Victor</p> <p>16 to get it better the next time we have</p> <p>17 another similar project to work on.</p> <p>18 Q. Let me just interrupt here a second. At</p> <p>19 this time, in November, had he completed</p> <p>20 building the testing machine?</p> <p>21 A. I would say it was not fully operational.</p> <p>22 It seemed like that every -- it would fail</p> <p>23 often enough that -- or have to be stopped</p>

29 (Pages 113 to 116)

## FREEDOM COURT REPORTING

Page 117	Page 119
<p>1 -- We found a problem often enough that I 2 couldn't say it was completely 3 operational, but it would run probably 4 eighty percent of the time it needed to 5 run. So it was in an operational 6 condition, but there's still probably some 7 bugs to be figured out about it.</p> <p>8 <b>Q. But that's typical any time you build a 9 machine of this complexity, isn't it, that 10 there are bugs you have to get out of it?</b> 11 MR. LIGHTFOOT: Objection. 12 THE WITNESS: I still answer, 13 right? 14 MR. LIGHTFOOT: You do.</p> <p>15 A. Yes. That's not uncommon. It's not 16 uncommon.</p> <p>17 <b>Q. Okay. All right. So he was going -- 18 Victor was going on vacation or I guess 19 had gone on vacation, and then continue 20 on.</b> 21 A. He was on vacation. Monday morning I go 22 to work. And as is my normal routine, I 23 start turning the equipment on, knowing</p>	<p>1 not knowing if it's safe to operate and 2 knowing that people are going to be 3 passing by. Either the building gets 4 blown up or the thing blows up and hurts 5 somebody, or anything could happen if the 6 -- if we're not properly discharging the 7 steam. So I look at the fixture. I see 8 some -- I see loose wires on every 9 station. I'm concerned about how to -- 10 should I even turn it on now. I go back 11 to my desk. I call Victor. Got him on 12 the phone. He reminded me that he had had 13 some issues with the steam cleaner, and 14 that he had disconnected these wires. I'm 15 not sure if he told me at that time or if 16 we -- I think he did say at that time that 17 he had spoken to Chad about it and that 18 everything was okay. Chad was in the 19 hospital with -- at least with chest 20 pains. I don't know exactly what the 21 condition was. But I believe he was in 22 the hospital room -- this comes out after 23 the fact -- when Victor and Chad had their</p>
Page 118	Page 120
<p>1 that, you know, it's my job to do this. I 2 get to the steam cleaner and I can't -- I 3 see that there are wires disconnected from 4 the fixture itself. And I'm afraid to 5 turn it on because I don't know what the 6 wires are there for, why they're there -- 7 rather, why they're not connected, and 8 what that's going to do if I do turn the 9 machine on. Because, again, portable 10 steam cleaners -- any steam-generating 11 vessel, if you don't vent the steam but 12 you allow the unit to continue to heat 13 becomes a bomb, literally becomes a bomb. 14 It will explode. If you're making steam 15 and you don't release that pressure -- 16 It's just like the old-style pressure 17 cookers that blow up and blow the meat 18 sauce all over the roof. This is what 19 you've got. Steam cleaners, by their 20 operation, make more pressure than a 21 pressure cooker. So that makes the 22 explosion that much worse. 23 I was not going to turn this thing on</p>	<p>1 discussion. 2 Anyway, I asked Victor, "Where do the 3 wires go?" He said he would take care of 4 it when he got back. I indicated that 5 that wasn't acceptable because we had to 6 run it this week while he's gone -- or the 7 time he's gone. I think I said something 8 to the effect of, "I'll see if I can't 9 figure it out. But if I can't figure it 10 out, I've got to be able to talk to you so 11 I can put this thing back into running 12 order." 13 I went back to the steam cleaner to 14 -- We hung up. I went back to the steam 15 cleaner to see if I could figure out where 16 the wires went. I couldn't. I tried to 17 call Victor again and I couldn't get him 18 back on the phone. At that point I went 19 to Mr. Robertson and explained that the 20 steam cleaner is not working. These wires 21 are disconnected. I can't get in touch 22 with Victor. My only option at this point 23 is to take everything out and see what all</p>

30 (Pages 117 to 120)



## FREEDOM COURT REPORTING

Page 121

1 goes back in and to rebuild it. I'd  
 2 rather not do that because that's going to  
 3 take another couple of months to get it  
 4 figured out. "What do you want to do?"  
 5 Basically asking Terry, "How do you want  
 6 to handle this?" My instruction was to  
 7 then attempt to make it work. If I can't  
 8 make it work, we'll deal with it when  
 9 Victor comes back.  
 10 **Q. Did you then try to make it work?**  
 11 A. Yes, sir.  
 12 **Q. Were you able to make it work?**  
 13 A. No, not at all.  
 14 **Q. Did Victor have any discussion with you**  
 15 **before he left to go on vacation about the**  
 16 **problems -- about the issues with the**  
 17 **steam cleaner? You said he reminded you**  
 18 **that there were issues with it.**  
 19 A. He said something about -- We use a  
 20 transducer to determine -- A transducer is  
 21 a device that takes an analog signal --  
 22 "analog" being a natural signal -- and  
 23 transposes it into an electrical impulse

Page 122

1 that a machine can then read. So we use  
 2 this transducer -- we wanted to use the  
 3 transducer to monitor the steam output so  
 4 we'd know when to refill it. He said he  
 5 was having some trouble making the  
 6 transducer operate. My comment back to  
 7 that was, "Can you make this fixture  
 8 operational?" He said, "Yes." I said,  
 9 "Well, make it operational, and we'll  
 10 worry about the transducers at a later  
 11 point." The final direction was, "Make it  
 12 operational or make sure I understand why  
 13 it is not operational."  
 14 **Q. And when was the last moment he was on the**  
 15 **job before he left to go on vacation,**  
 16 **before his vacation began?**  
 17 A. I'm not sure if I understand.  
 18 **Q. Well, was it -- I mean, what day did his**  
 19 **vacation begin? Was it like a week**  
 20 **vacation, beginning on a Monday?**  
 21 A. Oh, yes, yes. I'm sorry. His vacation  
 22 started on a Monday and it was supposed to  
 23 run through the week.

Page 123

1 **Q. Did he work on Saturday and Sunday?**  
 2 A. No, sir. It would have been Friday.  
 3 **Q. Okay. So did he work a full day that**  
 4 **Friday?**  
 5 A. He asked me about taking off early. And I  
 6 said that if he would make the thing  
 7 operational and get me up to speed on how  
 8 to make it work, leaving a little early  
 9 probably wouldn't be a problem. But  
 10 you've got to meet these conditions first.  
 11 **Q. Did he talk with you before he left?**  
 12 A. No, sir.  
 13 **Q. He was out a week?**  
 14 A. Yes, sir.  
 15 **Q. All right.**  
 16 A. I would need to review it, but I believe  
 17 it was a one-week vacation. I don't think  
 18 it was two. I think it was one.  
 19 **Q. Okay. Now, when he got back, was that on**  
 20 **a Monday?**  
 21 A. Yes, sir.  
 22 **Q. Is that the day he was terminated?**  
 23 A. Yes, sir.

Page 124

1 **Q. How many conversations did you have during**  
 2 **the week of his vacation with Terry**  
 3 **Robertson about Victor Smith?**  
 4 A. I don't know. I honestly don't know.  
 5 **Q. At what point did you become aware that**  
 6 **Terry Robertson was going to terminate**  
 7 **Victor Smith's employment?**  
 8 A. After it happened.  
 9 **Q. You didn't know what was going to happen**  
 10 **before it happened?**  
 11 A. That's correct.  
 12 **Q. Who all -- Well, when did Terry Robertson**  
 13 **meet with Victor Smith to tell him he was**  
 14 **fired?**  
 15 A. It's my understanding it was the morning  
 16 of his return from vacation.  
 17 **Q. Were you present in the office when that**  
 18 **meeting occurred? I say "in the office."**  
 19 **I assume it was done in Mr. Robertson's**  
 20 **office?**  
 21 A. I think it was done in his office. Was I  
 22 present in Mr. Robertson's office?  
 23 **Q. Yes.**

31 (Pages 121 to 124)



## FREEDOM COURT REPORTING

Page 157	Page 159
<p>1 13. That's another part of the policy</p> <p>2 manual.</p> <p>3 A. Okay.</p> <p>4 Q. Have you reviewed that before?</p> <p>5 A. Probably.</p> <p>6 Q. And that deals with what?</p> <p>7 A. Performance reviews.</p> <p>8 Q. And were the performance reviews of Victor</p> <p>9 Smith that we've gone over and talked</p> <p>10 about here today conducted in accordance</p> <p>11 with that policy?</p> <p>12 A. Let me read it. I would have to say no to</p> <p>13 that.</p> <p>14 Q. In what way were they not?</p> <p>15 A. Well, the third sentence indicates that</p> <p>16 performance reviews should take place</p> <p>17 during the month of April. And at the</p> <p>18 earliest I reviewed with Victor was in</p> <p>19 May.</p> <p>20 Q. Well, is that the only thing?</p> <p>21 A. As far as the review goes, I believe so.</p> <p>22 Q. Okay. Let me ask you, backing up to the</p> <p>23 August evaluation of Victor Smith.</p>	<p>1 Q. What is it?</p> <p>2 A. This is a handout -- Let me back up a</p> <p>3 little bit. Brian McGhee, that we've</p> <p>4 mentioned before, was hired into Euro-Pro</p> <p>5 from Auburn University. He was a very</p> <p>6 recent graduate of their Master's in</p> <p>7 Electrical Engineering Program. His -- I</p> <p>8 don't know for how long. But for some</p> <p>9 time during his last -- during his</p> <p>10 Master's work he instructed the electrical</p> <p>11 engineering students at Auburn University</p> <p>12 under Programmable Logic Controller</p> <p>13 instruction. Programmable Logic</p> <p>14 Controllers are commonly referred to as</p> <p>15 PLC's within the industry. He gave a</p> <p>16 general class to the students at Auburn</p> <p>17 University on how to program -- generally</p> <p>18 how to program PLC's. I asked him to then</p> <p>19 give a class to our employees on the</p> <p>20 specific direct Soft 32 program that we</p> <p>21 use. So this is a handout from that class</p> <p>22 that specifically details how to program</p> <p>23 the exact PLC units that we use at</p>
Page 158	Page 160
<p>1 A. Okay.</p> <p>2 Q. I believe that's Plaintiff's Exhibit 6 or</p> <p>3 it may be 5.</p> <p>4 A. Okay.</p> <p>5 Q. If you go to the last page where the</p> <p>6 overall evaluations -- may be the</p> <p>7 next-to-the-last page. There is the</p> <p>8 number 3.5 down there on the bottom left.</p> <p>9 I want to ask you again about what scale</p> <p>10 that's on.</p> <p>11 A. Scale of 5.</p> <p>12 Q. Is it possibly a 1-to-4 scale?</p> <p>13 A. No, sir.</p> <p>14 Q. You're certain about that?</p> <p>15 A. Absolutely.</p> <p>16 Q. I may or may not mark this. I want to ask</p> <p>17 you about it first. It may be irrelevant.</p> <p>18 This document here is several pages long</p> <p>19 that's been produced. It says "PLC</p> <p>20 Instruction."</p> <p>21 A. Yes, sir.</p> <p>22 Q. Can you tell me what this is?</p> <p>23 A. Yes, sir.</p>	<p>1 Euro-Pro. The nomenclature may be</p> <p>2 different. Some terms may be different.</p> <p>3 This is detailed to the ones that we</p> <p>4 purchased.</p> <p>5 Q. Victor Smith, did he sit in on this class?</p> <p>6 A. I believe so. Yes, sir.</p> <p>7 Q. Was any part of his job to program the</p> <p>8 computers with this program?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And was he able to do that? Did you ever</p> <p>11 have a problem with him not properly doing</p> <p>12 that part of his job?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. Who is Jeff Garrison?</p> <p>15 A. Jeff works for us.</p> <p>16 Q. When was he hired?</p> <p>17 A. December of '04.</p> <p>18 Q. After Victor left?</p> <p>19 A. I believe so.</p> <p>20 Q. Now, Jeff Garrison is an engineer?</p> <p>21 A. That's correct.</p> <p>22 Q. When was the decision made to hire an</p> <p>23 engineer?</p>

40 (Pages 157 to 160)

## FREEDOM COURT REPORTING

Page 161	Page 163
<p>1 A. Honestly, I don't know.</p> <p>2 <b>Q. Who made the decision?</b></p> <p>3 A. I don't know that either.</p> <p>4 <b>Q. Do you know if the decision to hire an</b></p> <p>5 <b>engineer was made before or after Victor</b></p> <p>6 <b>Smith was terminated?</b></p> <p>7 A. I don't know. I'd have to guess.</p> <p>8 <b>Q. But at any rate, we do know that Jeff</b></p> <p>9 <b>Garrison was hired after Victor was</b></p> <p>10 <b>terminated?</b></p> <p>11 A. That's correct.</p> <p>12 <b>Q. And do you know the exact date he came in?</b></p> <p>13 MR. LIGHTFOOT: He's already said</p> <p>14 he didn't.</p> <p>15 A. I don't.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. I will say this: Jeff was part of -- I</p> <p>18 want to get this right. The word escapes</p> <p>19 me. We approached Auburn University,</p> <p>20 their electrical group -- actually, their</p> <p>21 electrical group and their mechanical</p> <p>22 group, for senior design projects. They</p> <p>23 routinely -- It's routine in the</p>	<p>1 <b>Q. Was someone else hired at the same time</b></p> <p>2 <b>Jeff was?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. Who?</b></p> <p>5 A. Larry Frost.</p> <p>6 <b>Q. Okay. Were they hired both in December of</b></p> <p>7 <b>'04?</b></p> <p>8 A. I would say so. All coming out of this</p> <p>9 Electrical Engineering Senior Project</p> <p>10 Design Group.</p> <p>11 <b>Q. At the time Victor left, as I understand</b></p> <p>12 <b>it, the steam testing device was</b></p> <p>13 <b>operational but not fully operational?</b></p> <p>14 MR. LIGHTFOOT: Objection. Asked</p> <p>15 and answered. Go ahead.</p> <p>16 A. It seemed to be operational before he</p> <p>17 left. When we found the exposed wires, we</p> <p>18 were -- it then became non-operational</p> <p>19 because we weren't sure if it was safe to</p> <p>20 operate.</p> <p>21 <b>Q. Well, let me -- Right. I understand,</b></p> <p>22 <b>because of the exposed wires, it was not</b></p> <p>23 <b>operational. But I understood you to say</b></p>
Page 162	Page 164
<p>1 engineering field for the senior students</p> <p>2 to design a product, and that tells their</p> <p>3 professors how well they can design a</p> <p>4 project and if they deserve to graduate or</p> <p>5 not. We approached Auburn University for</p> <p>6 two electrical projects and one or two</p> <p>7 mechanical projects.</p> <p>8 Brian McGhee, as the lead of the</p> <p>9 Electrical Engineering Group, had gotten</p> <p>10 to the point where he needed help in his</p> <p>11 work, the electrical -- design of</p> <p>12 electronic circuits. Jeff and one other</p> <p>13 guy were noted during that time -- and</p> <p>14 this is -- You approach these guys at the</p> <p>15 beginning of their semester. So it would</p> <p>16 have been in September, I think, of '03,</p> <p>17 whenever school starts -- to here's a</p> <p>18 couple of projects we'd like to see if</p> <p>19 your design students could help us with.</p> <p>20 Jeff and Larry Frost were identified</p> <p>21 fairly early on as possible candidates.</p> <p>22 Once they graduated school, they were</p> <p>23 hired.</p>	<p>1 <b>earlier, exposed wires aside, it was maybe</b></p> <p>2 <b>only eighty percent operational?</b></p> <p>3 MR. LIGHTFOOT: Objection. Go</p> <p>4 ahead.</p> <p>5 <b>Q. Is that what you said?</b></p> <p>6 A. Yes. That's what I said.</p> <p>7 MR. LIGHTFOOT: Objection.</p> <p>8 <b>Q. Whose job did it become after Victor's</b></p> <p>9 <b>termination to bring that machine into</b></p> <p>10 <b>full operation?</b></p> <p>11 A. Mine.</p> <p>12 <b>Q. What part, if any, did Mr. Garrison play</b></p> <p>13 <b>in working on the steam cleaner testing</b></p> <p>14 <b>device?</b></p> <p>15 A. Jeff assisted. Once I got into it and</p> <p>16 realized how much work it would take, we</p> <p>17 were faced with the choice of me doing</p> <p>18 nothing but steamers and steam cleaners or</p> <p>19 getting a little bit -- a little bit of</p> <p>20 help, and I could continue to run the</p> <p>21 other projects as well as my own workload.</p> <p>22 And, so, in that role Jeff helped.</p> <p>23 <b>Q. All right. Are you saying that it would</b></p>

41 (Pages 161 to 164)

## FREEDOM COURT REPORTING

Page 165	Page 167
<p>1 have been pretty much a full-time job for</p> <p>2 you to work on the steam cleaner tester?</p> <p>3 A. Yes, sir. Basically, I would have had to</p> <p>4 fill Victor's shoes completely. And with</p> <p>5 my current workload I just didn't have</p> <p>6 time.</p> <p>7 Q. So Victor's job was then divided between</p> <p>8 you and Jeff Garrison; is that correct?</p> <p>9 MR. LIGHTFOOT: Objection.</p> <p>10 A. I would characterize it as saying I took</p> <p>11 on the job and Jeff gave me a little help.</p> <p>12 Q. So how much of your time, after Victor</p> <p>13 Smith left, was spent working on the</p> <p>14 things Victor had been working on?</p> <p>15 A. Eventually that became my full-time job.</p> <p>16 It eventually became my full-time job.</p> <p>17 It's a full-time -- that's a full-time</p> <p>18 position. In order to keep the things</p> <p>19 running, you've got to have somebody back</p> <p>20 there making sure they are running.</p> <p>21 Q. Is that your full-time position now?</p> <p>22 A. Pretty much.</p> <p>23 Q. And you say that no one has been hired to</p>	<p>1 MR. LIGHTFOOT: For what period</p> <p>2 of time?</p> <p>3 Q. Well, over the first -- say the first</p> <p>4 three months.</p> <p>5 A. On the steam cleaner?</p> <p>6 Q. Yeah.</p> <p>7 A. I would estimate he put what I call</p> <p>8 one-man month into it. Four weeks, forty</p> <p>9 hours a day, over a three-month period or</p> <p>10 so.</p> <p>11 Q. So over a three-month period it was -- he</p> <p>12 devoted about a third of his time to it?</p> <p>13 A. That's a fair estimate, I think.</p> <p>14 Q. Let me ask you this: If it was eighty</p> <p>15 percent operational when Victor Smith</p> <p>16 left, how long did it take to get it up to</p> <p>17 a hundred percent?</p> <p>18 MR. LIGHTFOOT: Objection. I</p> <p>19 believe he testified he had</p> <p>20 to start over. But anyway,</p> <p>21 go ahead.</p> <p>22 A. We did. We had to start over from</p> <p>23 scratch. Not knowing -- Again, not</p>
Page 166	Page 168
<p>1 replace Victor?</p> <p>2 A. That's correct.</p> <p>3 Q. Is anyone going to be hired?</p> <p>4 A. We've had some subsequent changes. And I</p> <p>5 may be changing roles, and we'll deal --</p> <p>6 bring somebody in to fill mine or Victor's</p> <p>7 position at this point.</p> <p>8 Q. Is Mr. Garrison still with the company?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Is he white?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What age person is he?</p> <p>13 A. I don't know.</p> <p>14 Q. He just recently graduated from Auburn</p> <p>15 University?</p> <p>16 A. That's correct.</p> <p>17 Q. He's an engineer?</p> <p>18 A. Yes, sir.</p> <p>19 Q. When he came to work for Euro-Pro,</p> <p>20 Mr. Garrison, how much of his -- what</p> <p>21 percentage of his time would you estimate</p> <p>22 was devoted to completing the steam</p> <p>23 cleaner tester?</p>	<p>1 knowing about the wires, we had to start</p> <p>2 over from scratch.</p> <p>3 Q. How long did it take to start over from</p> <p>4 scratch and get it fully operational?</p> <p>5 A. I think at least two months. Maybe a</p> <p>6 little longer.</p> <p>7 Q. And during that time Mr. Garrison spent</p> <p>8 approximately a third of his time on that</p> <p>9 project?</p> <p>10 A. I think that's fair. I mean, again, we</p> <p>11 hired him because we had other things for</p> <p>12 him to do.</p> <p>13 Q. Of the employees that are currently</p> <p>14 employed in the Lee County facility of</p> <p>15 Euro-Pro, how many of them are black?</p> <p>16 A. One.</p> <p>17 Q. And what's that employee's name?</p> <p>18 A. Duvell Robinson.</p> <p>19 Q. And he's a lab tech?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Have there been any other black employees</p> <p>22 hired since Victor Smith was terminated?</p> <p>23 A. No, sir, not permanent.</p>

42 (Pages 165 to 168)

## FREEDOM COURT REPORTING

Page 169

- 1 Q. Have there been some hired temporarily?  
 2 A. Yes, sir.  
 3 Q. Through a temp agency?  
 4 A. Through a temp agency. Yes, sir.  
 5 Q. And they were not kept full-time, or they  
 6 were not —  
 7 A. I'm sorry. One more. I completely forgot  
 8 about Patricia.  
 9 Q. Patricia?  
 10 A. I honestly -- I don't remember her last  
 11 name.  
 12 Q. What department does she work in?  
 13 A. She's a lab tech now.  
 14 MR. LIGHTFOOT: Temp or regular?  
 15 THE WITNESS: She's full-time. I  
 16 think around June of last  
 17 year she was made full-time.  
 18 Sorry. Might have been June  
 19 of this year she was made  
 20 full-time. Sorry.  
 21 Q. Now, Mr. Hudnall, I want to cover one  
 22 other area. There's been testimony in  
 23 Mr. Victor Smith's deposition of the use

Page 170

- 1 of some offensive words. I want to ask  
 2 you this: Personally, does the use of the  
 3 word "nigger" offend you?  
 4 A. Absolutely.  
 5 Q. Is that a word that is frequently used  
 6 around the Euro-Pro factory?  
 7 A. No, sir.  
 8 Q. Do you consider it to be inappropriate to  
 9 use that word?  
 10 A. Yes, sir.  
 11 Q. Are there any written policies that are  
 12 directed toward the use of that kind of  
 13 offensive language?  
 14 A. I don't know what the 401 posters say  
 15 about language.  
 16 Q. The 401 posters being  
 17 anti-discrimination --  
 18 A. Those. Right.  
 19 Q. -- information?  
 20 Have you ever used the word "nigger"  
 21 during work hours in front of Victor  
 22 Smith?  
 23 A. No, sir. I don't believe so.

Page 171

- 1 Q. You don't believe so?  
 2 A. No, sir.  
 3 Q. Have you ever repeated any routines by  
 4 some comedian wherein that comedian used  
 5 that word?  
 6 A. I believe so. Yes, sir.  
 7 Q. All right. And was Victor Smith present  
 8 when you repeated that?  
 9 A. Yes, sir.  
 10 Q. And as you were repeating this, did you  
 11 use the word "nigger"?  
 12 A. No, sir.  
 13 Q. Did you use any other word that you would  
 14 consider offensive had it just been  
 15 mentioned in ordinary conversation?  
 16 A. It's hard to know what offends someone  
 17 without them telling you. But I don't  
 18 believe so.  
 19 Q. Okay. Did you ever hear any other  
 20 employee use that word or any other word  
 21 that you would consider to be racially  
 22 offensive?  
 23 A. No, sir.

Page 172

- 1 Q. Who was the comedian that you were talking  
 2 about when we just went over that? David  
 3 Chappelle?  
 4 A. That would have been one. Yes, sir.  
 5 Q. Do you recall any conversation you ever  
 6 had in Victor Smith's presence where you  
 7 were talking about David Chappelle and  
 8 anything he said during a comedy routine?  
 9 A. We would discuss him, that he had -- About  
 10 the time Victor came to work for us, he  
 11 started a show on comedy central. I  
 12 thought it was a point -- a point of  
 13 common interest. And, so, it seemed like  
 14 water-cooler talk, for lack of a better  
 15 term. You come in the next morning. "Did  
 16 you see the show? Yeah, we saw the show."  
 17 A lot of his comedy is racially motivated.  
 18 But you try to say to yourself -- You're  
 19 trying to get the funniness across and not  
 20 the mean-spirited part.  
 21 Q. I understand. Okay. I think that's all.  
 22 Let me take about five minutes and then  
 23 we'll come back.

43 (Pages 169 to 172)



## FREEDOM COURT REPORTING

Page 177

1 never felt a current sensor was going to  
 2 do the job.  
 3 **Q. Do you remember that Victor did believe**  
 4 **that that was something necessary?**  
 5 A. I remember talking about it.  
 6 **Q. Okay.**  
 7 A. I remember we did talk about it.  
 8 **Q. You don't remember any resolution that the**  
 9 **two of you came to about whether it was**  
 10 **necessary or not?**  
 11 A. I seem -- I know I expressed my hesitation  
 12 for such a device. I didn't understand  
 13 how the current sensor was going to do  
 14 anything over and above what we already  
 15 had.  
 16 **Q. Do you recall Victor saying that he would**  
 17 **be available during the vacation to come**  
 18 **back up there and put the current sensor**  
 19 **device or do any other repairs or**  
 20 **maintenance to this steam cleaner tester?**  
 21 A. I believe he said something to that  
 22 effect. When I called him Monday, I  
 23 reminded him I may need his help. And

Page 178

1 then when I called him back Monday, he  
 2 didn't answer the phone. When I called  
 3 him back Tuesday, he didn't answer the  
 4 phone. I made several calls back that  
 5 week he was on vacation to get this  
 6 fixture running. We talked Monday  
 7 morning. I told him, "I'm going to see  
 8 what I can do to get it going. If I  
 9 can't, I'm going to call you back." When  
 10 I called back, I didn't get an answer.  
 11 **Q. Did you get an answering machine?**  
 12 A. Nothing. Just the phone would ring.  
 13 **Q. How many times did you call?**  
 14 MR. LIGHTFOOT: The whole time?  
 15 MR. COTTLE: Yeah.  
 16 **Q. During that week.**  
 17 A. I think twice on Monday. Of course, we  
 18 talked once. I think I called back twice  
 19 on Monday and I tried another time  
 20 Tuesday. By that time I got frustrated  
 21 and gave up.  
 22 **Q. Does Euro-Pro run regular hours on**  
 23 **Saturday and Sunday?**

Page 179

1 A. No, sir.  
 2 **Q. Can the employees come in and work on**  
 3 **those days if they are behind or need to**  
 4 **or want to?**  
 5 A. They can. If it's going to be testing  
 6 work, we do require that someone else be  
 7 in the building for safety reasons. But  
 8 if a person had something that was  
 9 non-threatening to do, we have -- The  
 10 doors are magnetically locked. We all  
 11 have a magnetic little fob that allows you  
 12 access to go in and out. And most  
 13 everybody that has that fob also has a key  
 14 to the front door.  
 15 **Q. Isn't it true that Victor Smith frequently**  
 16 **worked on weekends?**  
 17 A. I don't know how frequently. I would see  
 18 him there occasionally on the weekends.  
 19 **Q. Saturdays and Sundays?**  
 20 A. I can't speak to Sundays. I don't work on  
 21 Sundays. I would come up on Saturdays and  
 22 he'd there be. Attendance was never a  
 23 problem, never a problem.

Page 180

1 **Q. That's all. Thank you.**  
 2 MR. LIGHTFOOT: I've got none.  
 3  
 4 \*\*\*\*\*  
 5 FURTHER DEPONENT SAITH NOT  
 6 \*\*\*\*\*  
 7  
 8 REPORTER'S CERTIFICATE  
 9 STATE OF ALABAMA,  
 10 MONTGOMERY COUNTY,  
 11 I, Jackie Parham, Certified Shorthand  
 12 Reporter and Commissioner for the State of  
 13 Alabama at Large, do hereby certify that I  
 14 reported the deposition of:  
 15 RALPH HUDNALL,  
 16 who was first duly sworn by me to speak the  
 17 truth, the whole truth, and nothing but the  
 18 truth, in the matter of:  
 19  
 20 IN THE UNITED STATES DISTRICT COURT  
 21 FOR THE MIDDLE DISTRICT OF ALABAMA  
 22 EASTERN DIVISION  
 23

45 (Pages 177 to 180)



# **Exhibit C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

VICTOR SMITH,

Plaintiff,

v.

EURO-PRO OPERATING, L.L.C.,  
EURO-PRO MANAGEMENT COMPANY  
CORP. and STANRO-EP CORP.,

Defendants.

CASE NO: 3:05 CV 1186

DECLARATION OF TERRY ROBERTSON

Terry Robertson declares as follows:

1. My name is Terry Robertson. I am over the age of eighteen, and I have personal knowledge of the facts and information set forth in this declaration.
2. I live at 4864 BRANDON CREEK DRIVE Boulder, CO 80301
3. I was employed at Euro-Pro facility in Auburn, Alabama at all relevant times as the Executive Vice President of Quality and Engineering.
4. In December 2004, I alone made the decision to terminate Victor Smith. Just prior to my decision, Ralph Hudnall reported to me the incident of Smith's insubordination and poor handling of the situation relating to the non-operational fixture when he went on vacation in November 2004.
5. Hudnall was not a part of the decision-making process, and I never discussed terminating Smith's employment with Hudnall.

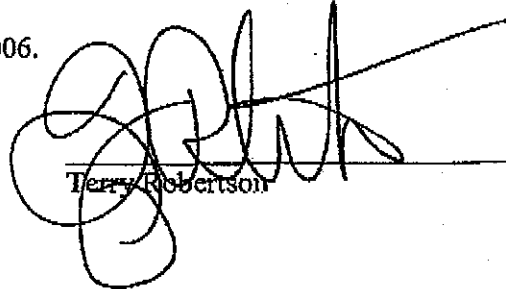
6. I did not inform Hudnall that I had made the decision to terminate Smith's employment, and I did not inform Hudnall that I would be terminating Smith's employment when he returned from vacation.

7. I terminated Smith's employment for poor performance, including his failure to complete the Steam Cleaner Testing fixture. The final straw of his unacceptable performance related to his actions surrounding his leaving for vacation and dealings with Hudnall.

8. My reasons for terminating Smith are more fully set forth in the termination memo I authored labeled "Victor Smith (General)." This memo is attached as Exhibit 1.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15 day of November, 2006.



Terry Robertson

**Victor Smith (General)**

1. *Don't appear to want to be here?*
2. *Steam station life testing station - Already total investment, 25K could have built outside not any testing for six months. We have been waiting for this item to run for six months, as of today it is still not running, we have spent so much money trying to get this item up and running, this is just not acceptable. -*
3. *We acquired lab view software controls from Auburn University, this was brought here, there have been no attempts to get this free software up and running to tie into all of the stations, this is ill use of the equipment and free information that we have been given, but nothing has been utilized.*
4. *Pant press has been in the reliability stations for many months, I have come upon this unit not working, while inquiring with Victor he indicated that he was not running this item, did not have time, which is totally unacceptable.*
5. *Failure and analysis of failed items in reliability are defined in his job description, I have had problem with Victor getting these done, he always relies on someone else to do these, this has been overall problem with him taking responsibility of reviewing and analyzing things first hand and giving reports, he always seem to want someone else to perform and do this, instead of himself.*
6. *Clean up of area - always seemed painful that he did not want to pick up or clean up as the other employees, this is his area. He even went to order signs and said that everyone else was responsible for making a mess and not him. Point for the company is that we are all responsible, I sweep at least twice a week and pick up trash daily, so I believe everyone should be responsible. He would not take responsibility for his area, this was a major problem, same trash would sit there for weeks.*
7. *Totally changed personality after being made permanent, he was made permanent before many other temp employess, based on his resume and skills of what he was capable of doing electrically and electronically. In his exit review it was interesting that he said he was given a task he could not complete, was not given help (we had degreed engineers offering to help, but their help was refused) and this is where the problems started and ended.*
8. *There were previous issues that were discussed, 1. Did not like the fact that he could not discuss bonuses with other employees, said this did not make sense, when actually he was being given a bonus based on my recommendation only, he was not eligible for bonus anyway. 2. Was accused while here of a problem with two other female employees of harassment both from the office and outside the office, this created a problem area very early on, but we discussed and allowed this to pass as warning.*

12/2004

# **Exhibit D**



EEOC Form 161 (3/95)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: Victor Smith  
6472 County Road 158  
Lafayette, AL 36862

From: Birmingham District Office  
Ridge Park Place  
1130 22nd Street, South  
Birmingham, AL 35206

☐ On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
130-2005-00853	Charles A. Hullett, Investigator	(205) 212-2109

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

  
Bernice Williams-Kimbrough,  
District Director

26 SEP 2005

Enclosure(s)

(Date Mailed)

cc: Francine Rosenzweig, Gen Counsel  
STANRO-EP  
1210-Washington Street  
West Newton, MA 02465

John Cottle, III, Att.  
Bowles & Cottle  
P.O. Box 760397  
Tallahassee, AL  
32378

Enclosure with EEOC  
Form 181 (3/88)

### INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

#### PRIVATE SUIT RIGHTS — Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

#### PRIVATE SUIT RIGHTS — Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 — not 12/1/02 — in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

#### ATTORNEY REPRESENTATION — Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

#### ATTORNEY REFERRAL AND EEOC ASSISTANCE — All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**